

PUBLICATION

OIG Advisory Opinion 19-05: OIG Permits Purchase of Real Estate from Excluded Individual

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In a recent advisory opinion, the OIG permitted a federally funded community health center to purchase real estate from an entity owned, in part, by an individual who was excluded from participation in federal health care programs. The advisory opinion, Advisory Opinion 19-05, was issued September 11, 2019. The OIG specifically determined that the purchase of the real estate in this particular instance would not involve the submission of a claim for payment for the provision of items or services for which payment may be made under any federal health care program.

Factual Overview

The requestor is a community health center that owns and operates eight sites and receives federal grant funds through the Health Resources and Services Administration (HRSA) Bureau of Primary Health Care's Health Center Program. Each of the community health center's sites is enrolled in the Medicare program as a Federally Qualified Health Center (FQHC).

Under the proposed arrangement, the community health center would purchase a property, which includes the site of one of its facilities, from an entity that is owned and managed by an excluded individual and his wife. The purchase price would be determined by an independent appraisal. In addition, the community health center would not have any ongoing relationship with the excluded individual. Further, no federal grant funds would be used for the purchase, nor would the purchase be included as part of any claim or request for payment to a federal health care program. The community health center certified that it would not include the real estate purchase as part of any cost report or claim based on costs, and that the purchase would not be included in any federal health care program reimbursement methodology, including any prospective payment system. The real estate purchase would result in the community health center holding sole title to the property.

Legal Analysis

Any entity who arranges or contracts with an excluded individual or entity for the provision of items or services payable under a federal health care program is subject to civil monetary penalty liability. As a result, a provider is barred from obtaining any items or services from an excluded individual that would be included in any claim submitted to or request for payment from a federal health care program. For purposes of this bar, *items and services* is defined broadly to include items and services listed on an itemized claim, as well as those included in a federal or state health care program reimbursement method or required to be entered on a cost report or other cost-based claim submission.

Analyzing the proposed arrangement, the OIG determined that the transaction would not subject the community health center to sanctions. The OIG noted that the excluded individual was not providing an item or service payable under a federal health care program. The OIG relied on the community health center's certification that no claim or request for payment that included the real estate purchase would be submitted. Specifically, the community health center's certifications that the real estate purchase would not be listed on any claim or request for payment and would not be included in a reimbursement method or included in any cost report or cost-based claim were the primary bases for the OIG's determination.

The OIG also highlighted that no federal grant funds would be used to purchase the property and that there would be no ongoing relationship with the excluded individual to support its conclusion that the proposed arrangement would not represent the provision of items or services paid by a federal health care program.

Advisory Opinion 19-05 is helpful in that it recognizes that the trigger for potential liability is not just the existence of a financial arrangement with an excluded individual, but that financial arrangement must be included as part of a claim that is submitted to a federal health care program. Here the requestor certified that the real estate transaction did not involve federal funds and would not be included on the cost report, such that no claim was or would be submitted in connection with the proposed purchase.