

OIG issues negative laboratory advisory opinion



Rick L. Hindmand | Thursday, March 26, 2015

A laboratory that proposed to waive patient balances for out-of-network laboratory services has been told no. Specifically, the laboratory proposed to contract with physician practices to provide all laboratory services for practice patients, regardless of payor, and agree to waive all fees for patients who are enrollees of certain insurance plans that require them to use a different laboratory. However, the Office of Inspector General (OIG) of the Department of Health and Human Services posted a negative advisory opinion (Advisory Opinion 15-04) on March 25, 2015.

The OIG cited several reasons for its determination that the arrangement could potentially violate the Medicare and Medicaid anti-kickback statute and result in administrative sanctions, such as exclusion or civil monetary penalties. Even though the physician practices would not receive direct payments under the arrangement, the practices would receive remuneration that could induce referrals by offering convenience and efficiencies of using a single laboratory and, in this scenario, a single interface for the delivery of laboratory results. The OIG observed that the arrangement could cause inappropriate steering of patients and that there was no indication of quality or safety improvements that would lower the anti-kickback risk. Furthermore, the arrangement could result in Medicare and Medicaid charges substantially in excess of usual charges, and could relieve patients and plans of payment obligations in order to generate federal healthcare program business that could be charged at the full rate.

Advisory Opinion 15-04 provides another reminder of potential legal risks that can arise out of exclusive

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referral arrangements or agreements to provide services to some patients without collecting patient copayments, coinsurance, deductibles, or other fees that may be owing. Blanket waivers of patient balances can implicate federal or state false claims laws, and several states have specific statutes that prohibit blanket or advance agreements to waive patient balances.

For more information, please contact one of the attorneys listed below.



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