

2005's First Ambulance Service Related Advisory Opinion.

By G. Christopher Kelly

In a new advisory opinion, number 05-07, released on February 25, 2005, the Department of Health and Human Service's ("DHHS") Office of Inspector General ("OIG") has concluded that it would not impose penalties against a City for an arrangement between the City and a private ambulance service who won a competitive bid for the City's emergent ambulance transports. The OIG is the office of DHHS that, among other duties, monitors healthcare providers for violations of the Anti Kick-Back Act related to Medicare and other federal healthcare benefit funds. The advisory opinion was requested by the unnamed City.

The City made a request for bid proposals for a five year contract for the City's ambulance service needs. However the City also proposed an "exchange of services" between the City and the winning ambulance service. The arrangement was that the City would provide dispatch services for the ambulance service through its 911 center at no charge to the ambulance service. In exchange for this free dispatch service, the ambulance service would provide billing and collections services for the City, also at no charge. It was unclear from the advisory opinion exactly what the ambulance service would be billing and collecting for (i.e. some other medical program or an entirely unrelated office), however the City certified in requesting the opinion that the services were of like value and resulted in a fair and equitable exchange between the parties. Of course, that is a factual issue that the OIG did not look into, therefore they took that as true for the purpose of issuing the opinion.

The OIG acknowledged that this arrangement could raise kick-back violations in that the provision of free billing services offered in exchange for being awarded the contract to transport all patients in the City could result in a prohibited kick-back if the parties intended to induce the referral of business; but the OIG concluded that they would not impose sanctions against the City for proceeding with the arrangement. The Anti Kick-Back Act ("AKA") makes it a criminal offense to intentionally give or receive anything of value in exchange for the referral of Medicare patient business. Violation of the statute is a criminal felony punishable by a fine of up to \$25,000 and/or imprisonment of up to five years. A conviction of an AKA crime will also lead to exclusion from the Medicare, Medicaid, and other federally funded health benefit programs, meaning that the provider can no longer bill these insurance programs. There can further be civil liabilities under the AKA through the False Claims Act or other similar laws which would require all funds received as part of the illegal activity to be returned to the government, along with additional heavy penalties. Because violations of the AKA can be very subjective, the OIG issues these "advisory opinions" to give medical providers the opportunity to have a course of action approved prior to engaging in something that could later lead to severe liabilities. The OIG listed four factors that they found were in favor of allowing the City's proposal.

First the City certified that the dispatching services and the billing/collection services exchanged between the parties were of like value and therefore resulted in a fair and equitable exchange. The City also stated that the cost of providing the service by each

party was approximately the same. Based on those facts, the OIG concluded that the ambulance service was not offering a free billing/collection service in exchange for the referral of patients.

Second, the OIG found that the arrangement was likely to have a positive impact on fast, efficient, and effective patient care since the dispatch would be handled by the City's 911 system instead of being handed off to the ambulance service's own dispatcher. Avoiding the middle step in the process was believed to result in a quicker response time.

Third, since these are emergent calls, there is little risk of over-utilization of federal health care benefit programs (i.e. Medicare, etc.) or increased costs to those programs. The call volume is based on emergent calls to 911, and therefore the parties were unlikely to be able to manipulate the volume and create unnecessary charges to the government.

Fourth, while there will be an exclusive contract, the open bidding process will allow for competition. The OIG felt it was within the City's discretion to award the contract to only one service for the purposes of administrative and system efficiency. The OIG also stated that since these were emergent calls, the ambulance service would not be able to steer patients to one hospital over another, therefore there would be no impairment on the patient's choice of provider.

As with any advisory opinion, the OIG stated that the opinion was based on the information given to it by the requesting City, and therefore was dependent on its full and truthful disclosure of facts. As with all advisory opinions, the opinion can not and should not be relied upon by parties other than the one specifically requesting the opinion. The OIG and the federal government are not bound by this opinion and reserve the right to change their position in the future. Specific facts often lead to very different results (for example, if the value of the billing/collection service was more than the value of the dispatch services, the opinion might have been not to allow the arrangement), therefore, you should consult an attorney before beginning any course of action that you have questions about. For the same reasons, nothing in this article is intended by the author to be construed as legal advice.

The author has given a summary of the contents and provided some editorial comments on this advisory opinion. To view the entire opinion, go to:
<http://www.oig.hhs.gov/fraud/docs/advisoryopinions/2005/ao0507.pdf>

Other advisory opinions can also be found at the OIG's web site.

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