

PUBLICATION

Rural Hospital Cardiac Catheterization Lab Cost Savings Program issued favorable OIG Advisory Opinion

April 4, 2013

On December 31, 2012 the U.S. Department of Health and Human Services Office of Inspector General ("OIG") issued a favorable Advisory Opinion No.12-22 for a hospital cardiology group compensation arrangement that includes a performance bonus based on implementation of certain patient service, quality and cost savings initiatives in the hospital's cardiac catheterization four laboratories (the "Arrangement"). The Arrangement includes a cardiac catheterization co-management agreement with the only cardiology group on the rural hospital's medical staff and the only physician group in town that provides cardiac catheterization services (the "Group"). The arrangement however will not be exclusive to the Group if additional cardiologists join the medical staff. The Group will provide both management and medical services under the management agreement and will be paid a fixed fee and a performance fee.

The OIG issued this favorable opinion limiting its reach to the first 3 year term of the Arrangement despite its concerns generally adversely influencing physician judgment in the following manner: "(i) stinting on patient care, (ii) 'cherry picking' healthy patients and steering sicker (and more costly) patients to hospitals that do not offer such arrangements, (iii) payments to induce patient referrals, and (iv) unfair competition among hospitals offering incentive compensation programs to foster physician loyalty and to attract more referrals".

The OIG analyzed the arrangement under the Civil Money Penalties ("CMP") sections 1128A(b)(1)-(2) of the Social Security Act and under the Anti-kickback statute section 1128B(b).

The OIG reviewed the Performance Fee components of the Arrangement and concluded that the Cost Savings component did implicate the CMP. The OIG expressed concern that measures which standardized devices and supplies and limited the use of specific stents, contrast agents and medical devices might induce physicians to alter their current medical practice to reduce or limit services.

However, the OIG concluded the Arrangement has several features that, in combination, provide sufficient safeguards so that the OIG would not seek sanctions under the CMP. The Fixed Fee, Employee Satisfaction, Patient Satisfaction, and Quality Components of the arrangement which "do not involve an inducement to reduce or limit services and, therefore, do not implicate the CMP." Additionally, the Hospital certified that patient care is not adversely affected and the Group performance is monitored to protect against inappropriate reductions or limitations in patient care or services by medical staff committees, the Hospital Board and by use of independent third party auditors. Secondly, benchmarks are set within the Cost Savings Component of the Performance Fee to permit Group physicians to use the most cost effective and clinically appropriate devices and supplies. Third, the financial incentive tied to the Cost Savings Component is reasonably limited in duration and amount through a limited 3 year term and annual cap. Fourth, no Physician will receive any part of the Performance Fee if there is stinting on care, increasing referrals to the hospital cherry picking or accelerating patient discharges.

The OIG also reviewed the Arrangement under the Anti-kickback statute and while concluding it did not fit within a safe harbor, it would not impose sanctions subject to certain enumerated qualifications. First, the Hospital certified that the compensation paid to the Group under the Management Fee was fair market value. The Group is providing substantial services under the Management Fee which reduces the risk that the

compensation is payment for referrals. Secondly, the compensation does not vary based on the number of patients treated. Third, this is not an arrangement where the Hospital is attempting to engage the Group to obtain their referrals. The Hospital is the only operator of the cardiac catheterization labs within a 50 mile radius and the Group does not perform cardiac services anywhere but at the Hospital labs. Fourth, the measures included in the Arrangement which are based on nationally recognized standards are designed to improve quality rather than reward referrals. Lastly, the management agreement has a limited 3 year term duration.

In sum, once again, a carefully crafted cost savings program to improve the quality of patient care services may withstand scrutiny under the CMP and anti-kickback statutes.