

PUBLICATION

OIG Approves Free Transportation and Lodging for Certain, Low-Income Pregnant Women - Advisory Opinion 16-02 [Ober|Kaler]

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On March 1, 2016, the Department of Health and Human Services, Office of Inspector General (OIG) issued Advisory Opinion 16-02 [PDF], approving an academic medical center's (AMC's) provision of free transportation and lodging in limited circumstances for certain low-income, pregnant women.

The OIG noted that the AMC arrangement implicated both the Anti-kickback statute and the civil monetary penalty provision prohibiting inducements to beneficiaries (Beneficiary Inducement CMP). Ultimately, the OIG concluded it would not impose administrative sanctions against the AMC under either law. It cited the unique combination of factors present in the program.

Overview of Facts

The requester of the opinion, an AMC and a component of a public university system, offers labor and delivery care at an acute care hospital (Hospital), including specialty care for seriously ill or premature newborns. The AMC also provides prenatal care at 12 affiliated, hospital-based clinics (Clinics). Despite the fact that many women receiving prenatal care at a Clinic choose to deliver at the Hospital, not all of the Clinics are located nearby. Of the 12 Clinics, 11 are located between 14 and 103 miles from the Hospital.

The majority of Clinic patients are low-income women, many of whom qualify for Medicaid or the State Children's Health Insurance Program (CHIP). Because of this, and due to the distance between many of the Clinics and the Hospital, the AMC certified that some Clinic patients express concerns about the costs and difficulties of travel to the Hospital for delivery. In cases of high-risk pregnancy patients expressing such concerns, the AMC will offer mileage reimbursement or fare reimbursement for public transportation. Luxury or ambulance transportation costs are not reimbursed.

In addition, the AMC noted that Clinic patients may be offered free lodging at a perinatal residence (Residence) four blocks from the Hospital. Lodging is only available if there is a physician's order justifying the stay, pursuant to the AMC's written protocol. The great majority of woman who stay at the Residence are high-risk patients who require frequent maternal and fetal monitoring. Non-high-risk patients may also stay at the Residence if they are (1) experiencing contractions but are not yet in active labor, or (2) scheduled for induction of labor or delivery by caesarean section the following day.

The AMC certified that a patient's receipt of such assistance is not conditioned upon her use of any goods or services from Hospital or Clinic, or the selection of any particular provider. In addition, Clinic patients are always informed of their ability to choose any hospital for purposes of their deliveries.

The arrangement is not advertised and is provided without regard to a patient's payor or source of payment. Moreover, receipt of transportation or lodging assistance is available only to existing Clinic patients. Lastly, the AMC stated it would not claim the cost of the transportation or lodging as bad debt, or otherwise attempt to shift the cost of such services to federal, state, or private payers.

Legal Analysis: Anti-kickback Statute and the Beneficiary Inducement CMP

Due to the below-listed program features and safeguards, the OIG concluded the AMC's transportation and lodging assistance program posed a low risk under both the Anti-kickback statute and the Beneficiary Inducement CMP.

- *Patient benefit:* The OIG first emphasized the benefits afforded to Clinic patients as a result of a Hospital delivery – specifically, related to the continuity of care. In contrast to other, non-AMC-affiliated hospitals, Hospital physicians have ready access to Clinic patients' medical records and are familiar with Clinic patient's medical histories.
- *Reimbursement limited to "modest" transportation services and lodging:* The OIG further noted that the transportation and lodging offered by the AMC is "modest in nature and offered only in limited circumstances." Specifically, the OIG highlighted that transportation reimbursement is available only to those Clinic patients experiencing a high-risk pregnancy, and furthermore, only when the patient expresses concerns regarding cost and distance. Moreover, lodging is offered to Clinic patients only as medically necessary.
- *No advertisement:* The OIG highlighted the fact that the arrangement is not advertised, and that transportation and lodging assistance are offered only to current Clinic patients (who, as a result of the fact that the Clinics are hospital-based, are already Hospital patients).
- *Arrangement offered to all patients, irrespective of payor:* In addition, the OIG noted that transportation and lodging assistance is provided irrespective of the Clinic patient's source of payor – including whether the patient is a federal health care program beneficiary.
- *No shifting of costs to payors:* The OIG underscored the AMC's certification that it would not seek to claim the costs of the arrangement as bad debt, or otherwise shift costs to any payor, federal or private.
- *State oversight:* Lastly, the OIG noted the unique position of the AMC as state owned, and the fact that the arrangement was intended to specifically target a population served by a state-operated and -funded program, Medicaid and CHIP. As a result, the OIG indicated it was relying, at least in part, upon the state's own responsibility in carrying out and overseeing the proposed arrangement.

Thus, and in light of the above factors, the OIG concluded the AMC's arrangement would not serve as an inducement for patients to receive services at the Hospital in violation of either the Anti-kickback statute or the Beneficiary Inducement CMP.

Ober|Kaler's Comments

The broad applicability of Advisory Opinion 16-02 is unclear. In approving the program, the OIG was quick to point out that no individual factor (or set of factors) justified the OIG's decision. Rather, the OIG stressed that it was the program's "unique combination" of factors that warranted the conclusion.