

## OIG Finds Low Kickback Risk for Shuttle Service

In its most recent [Advisory Opinion \(15-13\)](#) on patient assistance programs, the Office of Inspector General at the U.S. Department of Health and Human Services (“OIG”) found that a health system’s proposed free shuttle service would pose a low risk of fraud and abuse and declined to impose sanctions under the Anti-Kickback Statute and Civil Monetary Penalties (“CMP”) law.

### *Proposed Arrangement*

The Requestor, an integrated health system in a rural area, was composed of a regional referral tertiary/quaternary care medical center (“Medical Center”), two smaller community hospitals (Hospitals A and B), a multispecialty group practice (the “Clinic”), and an ambulatory surgery center (“ASC”). While most of the physicians practicing at the Requestor’s facility were bona fide employees, some of the physicians at Hospital B were private practice physicians with offices on Hospital B’s campus. The Requestor proposed to offer a free van shuttle service between its facilities, including a central “drop-off and pick-up” location in the center of town. The Requestor wanted to provide this shuttle service to provide reliable transportation for patients seen at any of the system’s facilities. One shuttle service would run on an 18-mile circuit with stops at the Medical Center, Hospital B, the ASC, and town. The second shuttle would travel on a 10-mile circuit between the Medical Center and Hospital A. Patients would be transported without regard to their insurance coverage or ability to pay for services.

### *Analysis*

Anytime a health care provider offers something of value to federal health care program beneficiaries, the Anti-Kickback Statute and CMP laws are implicated. The Anti-Kickback Statute makes it a criminal offense to knowingly and willfully offer, pay, solicit, or receive any remuneration to induce or reward referrals of items or services reimbursable by a Federal health care program. The CMP law provides for the imposition of civil monetary penalties against any person who offers or transfers remuneration to a Medicare or Medicaid beneficiary that the person knows or should know is likely to influence the beneficiary’s selection of a particular provider or service payable by Medicare or Medicaid.

The OIG analyzed the facts of the proposed arrangements, and found that the following safeguards that the Requestor proposed created a minimal risk of fraud and abuse under the Anti-Kickback Statute or the CMP.

- The availability of the shuttle service would not be determined in a manner that took into account the volume or value of Medicare or Medicaid business. Patients would be able to use the shuttle service without regard to their use of certain services, diagnoses, insurance status, or ability to pay.
- The shuttle service would not include air, luxury, or ambulance-level transportation, which are more likely to induce beneficiaries’ choice of provider.
- The shuttle services’ drivers would be paid on a salary and not based on a per-person or per-patient basis.
- The shuttle service was local and within the Requestor’s facilities’ primary service areas.
- The shuttle service would not be marketed to the general public, and no marketing of services would occur on the shuttles. Instead, the availability of the shuttle would be communicated to existing patients of the Requestor.
- The Requestor would not shift the costs of the shuttle service to Medicare, Medicaid, other payers, or individuals.
- The OIG concluded that the shuttle would be unlikely to subsidize the private physician practices because the service primarily served to accommodate the Requestor’s patients.
- In the Requestor’s area, local public transportation was limited and there was no public transportation available between the Medical Center and Hospital B.

The safeguards in the Requestor's proposal closely mirror the [proposed safe harbor conditions](#) that the OIG released in October 2014, but which have not yet been finalized.

The OIG's conclusion is consistent with its review of previously proposed patient transport arrangements in Advisory Opinions 00-7, 11-02, and 11-16. Like the Proposed Arrangement here, those programs included many of the same safeguards to insulate beneficiaries from information associated with a donor's financial assistance that would influence the selection of a particular provider, supplier, product, or service or would improperly influence referrals by the charitable organization.

For more information about patient transportation programs, the civil monetary penalties provision, or the federal Anti-Kickback Statute, please contact Mary Malone, Emily Towey, or Colin McCarthy at (866) 967-9604 or by email at [mmalone@hdjn.com](mailto:mmalone@hdjn.com), [etowey@hdjn.com](mailto:etowey@hdjn.com), or [cmccarthy@hdjn.com](mailto:cmccarthy@hdjn.com). Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm's website at [www.hdjn.com](http://www.hdjn.com).

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