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OIG OKs Use of Hospital-Employed NP Services Free to Help Doctors

By Nina Youngstrom

In a new advisory opinion, the HHS Office of Inspector General (OIG) gave its blessing to an arrangement in which a hospital provides the services of its employed nurse practitioners (NPs) free to help physicians with inpatient and observation care.^[1] Although giving free services to referral sources would generate remuneration under the Anti-Kickback Statute (AKS) “if the requisite intent were present,” OIG found little risk of fraud and abuse.

The opinion is “a departure from how OIG typically treats arrangements involving remuneration between hospitals and referring physicians,” said Jennifer Michael, former chief of OIG’s Industry Guidance Branch, which issues advisory opinions. Generally, OIG frowns on hospitals giving away anything. Despite that, “the outcome is not terribly surprising given OIG’s push to value-based care,” Michael said. “It seems clear from the facts of this arrangement it will improve care.”

Although it’s helpful to have an opinion on the use of free NPs and other advanced practice providers (APPs), lawyers said it may have limited utility. For one thing, the opinion applies to services that are medical, not surgical, a fact that played a role in getting OIG’s approval, said attorney Holley Thames Lutz, with Dentons US LLP in Washington, D.C. “They may have come to a different conclusion” with a surgical service line, she noted. “The OIG said as much.” But Lutz questions whether this should be the case and whether free APPs in this context really is remuneration.

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