



December 11, 2012

**THE OFFICE OF INSPECTOR GENERAL APPROVES AN ARRANGEMENT  
AMONG THREE MUNICIPALITIES TO RECIPROCALLY WAIVE THE  
COST-SHARING OBLIGATIONS OF EACH OTHER'S RESIDENTS WHEN  
PROVIDING EMERGENCY MEDICAL SERVICES**

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The U.S. Department of Health and Human Services, Office of Inspector General (OIG) issued a favorable advisory opinion regarding a proposed arrangement in which three municipalities will waive the otherwise applicable cost-sharing obligations of each other's residents, when providing backup emergency medical services ("EMS"). In Advisory Opinion No. 12-18, posted on December 6, 2012, the OIG was asked if the arrangement would violate the civil monetary penalty provisions that prohibit inducements to federal program beneficiaries or the federal anti-kickback statute. The OIG found that the proposed arrangement could potentially generate prohibited remuneration under the anti-kickback statute, but approved the arrangement because it posed minimal risk of fraud and abuse under the circumstances.

The three municipalities each provide EMS to their residents in response to "911" emergency calls, through their own ambulance services. They do not provide non-emergency ambulance transports. When providing EMS to their own residents, each of the municipalities engage in "insurance only" billing, whereby they waive applicable copayments or deductibles for residents of their respective municipalities. The three municipalities proposed a mutual response arrangement, in which each will provide backup EMS for the others, when such mutual aid was needed to address an emergency. The backup EMS transportation will be provided to any individual who requires such services, including federal health care program beneficiaries. The three municipalities will, on a reciprocal basis, honor the "insurance only" billing policies of the other two municipalities when providing backup EMS for bona fide residents of those municipalities.

The OIG noted that the anti-kickback statute makes it a criminal offense to offer, pay, solicit, or receive any remuneration to induce or reward referrals of items or services reimbursable by a federal health care program. It also noted its long-standing concerns about the waiver of cost-sharing obligations, saying "providers that routinely waive Medicare cost-sharing obligations for reasons unrelated to individualized, good faith assessments of financial hardship may be held liable under the anti-kickback statute." Such waivers may constitute prohibited

remuneration to induce referrals under the anti-kickback statute, as well as a violation of the civil monetary penalty prohibition on inducements to beneficiaries. Nevertheless, the OIG determined that under the circumstances presented in the proposed arrangement, the risk of such prohibited remuneration will be minimal for several reasons.

First, the proposed arrangement will not involve the routine waiver of cost-sharing obligations because the backup EMS transportation will be provided on an unscheduled and sporadic basis. Second, the proposed arrangement will not increase the risk of overutilization of services and is unlikely to lead to increased costs to federal health care programs. Third, because each municipality will waive cost-sharing obligations when it provides EMS transportation to its own residents, there will be no expectation by the individuals that they would have cost-sharing obligations. Therefore, the waiver of such obligations for the instances in which the backup EMS transportation is provided, will be unlikely to influence the use of those services. The OIG also found persuasive the facts that the parties are local governments engaged in a mutual aid arrangement, and the individuals receiving the waiver will be treated the same as any other resident who receives EMS transportation. The OIG said these facts distinguish the proposed arrangement from arrangements in which a municipality requires a private company to bill “insurance only” as a condition of getting the municipality’s EMS transportation business. (The latter practice was found problematic by the OIG in Advisory Opinion No. 12-11 in September 2012).

Based on the totality of the facts presented in the proposed arrangement, the OIG concluded that it posed only a minimal risk of fraud and abuse and, therefore, it would not impose civil monetary penalties under the prohibition on beneficiary inducements or sanctions under the anti-kickback statute.

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