



Can Your ASC Provide Free Transportation to Its Patients?

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Many ambulatory surgical centers (ASCs) and physicians would like to provide their patients with an easy way to travel to and from their facilities for medical procedures. This sounds like it would be a nice gesture for the patient, but providers should be careful, as offering free transportation to patients or their family members is fraught with regulatory peril. Although the United States Department of Health and Human Services' Office of Inspector General (OIG) has provided guidance to several types of healthcare facilities regarding the provision by facilities of free transportation to patients, the OIG has still not issued any guidelines pertaining to this issue to ASCs. In this regard, ASCs must carefully consider whether providing transportation at no cost to patients would pass under the law.

Brief Summary of OIG Guidance

On November 17, 2000, the OIG issued a favorable advisory opinion to a hospital that would provide free transportation services to certain patients who were referred to the hospital for extended courses of treatment.

In August 2002, the OIG issued a Special Advisory Bulletin regarding offering gifts and

other inducements to beneficiaries, wherein the OIG stated that it was considering the possibility of a regulatory "safe harbor" exception under the CMP statute for complimentary local transportation offered to beneficiaries residing in the provider's primary service area. Later that year, the OIG solicited public comments on the possible development of an exception under the CMP statute for complimentary local transportation greater than nominal value.

On December 9, 2002, the OIG issued a letter stating that free local transportation provided by a hospital that costs no more than \$10.00 per trip and \$50.00 per patient in the aggregate on an annual basis does not violate the CMP statute.

On March 6, 2009, the OIG issued a favorable advisory opinion to a skilled nursing facility proposing to provide free local transportation to friends and families of its residents. Similar to its most recent advisory opinion, in concluding that the arrangement would not constitute grounds for the imposition of civil monetary penalties under the CMP statute or administrative sanctions under the AKS, the OIG cited a number of factors. These factors included that:

“Providing free transportation to patients or their family members can be fraught with regulatory peril”

- The services are not provided to targeted populations of federal healthcare program beneficiaries;
- The type of transportation was reasonable;
- The services would only be offered locally;
- Advertising would only be done locally;
- Public transportation was limited; and
- The cost of the transportation would not be claimed on any cost report or claim.

Most recently, on March 17, 2011, the OIG issued a favorable advisory opinion to a non-profit, tax-exempt hospital to provide free transportation to patients unable to transport themselves from physician offices located on, or contiguous to, the hospital's campus to the hospital for further treatment. The hospital represented in its request for an advisory opinion that these patients would require further evaluation and treatment, including admission to the hospital, and would be unable to transport themselves.

The OIG cited several factors in determining that the arrangement would not subject the hospital to administrative sanctions under the CMP statute or the AKS:

- The selection of patients eligible for the transportation would not be limited to targeted federal health care program beneficiaries, but determined based on uniform standards;
- The transportation was reasonable and not a luxury or specialized vehicle;
- Transportation was only offered locally;
- The free transportation would not be marketed or advertised other than to inform the physicians the transportation is available; and
- Public transportation and parking on the hospital's campus was limited.

The cost of the transportation would not be claimed on any cost report or claim, or otherwise shifted to any federal healthcare program.



How Does This Affect ASCs?

The most recent advisory opinion does not alter the general rule that free transportation in excess of nominal value potentially implicates the CMP statute and AKS. To date, the OIG has not adopted an exception to the law or provided any specific guidance for ASCs. Therefore, free transportation provided by ASCs must be carefully evaluated to determine compliance with the law as well as the factors enumerated by the OIG. Additionally, state law may apply to the offering of free transportation and providers, and facilities should review the applicable law in their states before providing complimentary transportation. Facilities and practitioners are urged to consult their healthcare attorneys concerning their own situations and any specific legal questions that they may have regarding the benefits and risks of such a program.

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