

OIG Again Views Complimentary Transportation Services Favorably

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On March 17, 2011, the Office of Inspector General (OIG) issued Advisory Opinion 11-02, which explained it would not impose sanctions on an acute care hospital's provision of complimentary transportation services. (This is the second advisory opinion on the issue; the first was issued on March 6, 2009—Advisory Opinion 09-01.) Subject to certain safeguards, the OIG determined that the proposed complimentary transportation arrangements did not pose a high risk for fraud, waste, and abuse.

The OIG scrutinizes complimentary transportation services, primarily, because of the potential to violate the federal Anti-Kickback Statute (AKS) and/or the Civil Monetary Penalties (CMP) law. The AKS makes it a crime to knowingly and willfully offer, pay, solicit, or receive any remuneration to induce or reward referrals of items or services reimbursable by a federal healthcare program. With the passing of healthcare reform, the AKS "intent" element was revised to make clear that there is no specific intent or actual knowledge required for an AKS violation. Moreover, any person (including healthcare providers and suppliers) who gives something of value (eg, free transportation) to a Medicare or Medicaid beneficiary that the person knows or should know is likely to influence the beneficiary's selection of items or services payable under Medicare or Medicaid may be subject to the imposition of CMPs. According to the OIG, many arrangements involving free transportation have important and beneficial effects on patient care, but only where such arrangements are narrowly tailored to address issues of financial need, limited transportation resources, treatment compliance, or safety. Despite the OIGs recognition of the potential beneficial effects on patient care, the OIG is also suspect of certain free transportation services, as they can often be an integral part of fraudulent or abusive schemes that lead to inappropriate steering of patients, overutilization, and the provision of medically unnecessary services.

Notably, in its earlier opinion, the OIG identified several factors to consider when evaluating arrangements involving free or below fair market value transportation services. Not one of these factors is determinative and this list of factors is not exclusive.

Transportation offered in a manner related to referrals:

- Selective criteria related to the volume or value of federal healthcare programs are suspect.
- Luxury or specialized transportation: The more luxurious or specialized the transportation (eg, limousines, airplanes, etc), the more suspect the arrangement as the transportation becomes more valuable to the recipient and, thus, more likely

to be an improper inducement.

- Geographic area for transportation: The more local the transportation, the less valuable the service becomes to the recipient.
- Availability for other means of transportation: The provision of free transportation in areas with less access to affordable transportation is less suspect.
- Marketing or advertising: Advertised services are more likely to be seen as an inducement for referrals.
- Transportation destination: Transportation to and from the offeror's premises is viewed as more appropriate than transportation to a different provider or supplier.
- Treatment of the costs of the free transportation: The costs of the transportation services should not be shifted in any manner to federal healthcare programs.
- Other characteristics that raise concerns: Whether the offeror of the free transportation is also a provider that will provide federally payable items and services to passengers.

In its most recent opinion, the OIG again evaluated a complimentary transportation service in which the requestor—a non-profit outpatient acute care hospital—proposed to provide complimentary transportation service to patients and their families at physicians' offices located on, or contiguous to, the hospital's campus. The physicians are all members of the hospital's medical staff. Under this proposed arrangement, the hospital will pick up patients in a hospital-owned van operated by a trained, licensed EMT employed by the hospital. The hospital certified that the approximate travel distance for the patients would be roughly one quarter mile. The hospital proposes to provide the services because transportation is limited and parking is difficult for feeble, elderly patients. The transportation would be offered uniformly to all patients and the cost would not be shifted on to any federal healthcare program. The cost of the transportation provided under this proposed arrangement could exceed \$10 per trip and \$50 annually per patient (which are amounts viewed by the OIG as nominal). The hospital also advised that it would not market or advertise the free service; rather, patients would be informed by their physicians. Finally, the hospital would operate this proposed arrangement according to written policies setting forth the operational requirements.

The OIG viewed this proposed arrangement favorably due to the following factors:

- Federal healthcare program beneficiaries would not be selectively limited. Moreover, patient eligibility for the transportation services would be uniformly determined by the physicians according to hospital's written policy setting forth the operational requirements.

- The transportation services would be reasonable (not luxury).
- The transportation services would only be offered locally from physicians' offices located on or contiguous to the hospital's campus and patients would only be transported one quarter of a mile.
- The service would not be advertised.
- There is limited access to, and availability of, local public transportation and parking.
- The cost of the transportation would not be shifted to a federal healthcare program.

With the issuance of this latest OIG opinion, imaging providers and suppliers that currently provide or are contemplating providing complimentary transportation programs should carefully review the OIG guidance in this area, paying special attention to the list of factors identified by the OIG when evaluating arrangements involving free or below fair market value transportation services.

Commentary

What Would You Do?

By AHRA Staff

Every month, a hypothetical industry and management related situation is posted. You are encouraged to share your thoughts (in the comment box below) on how you would resolve the issue. Be sure to check out others' responses and join the discussion.

Here is this month's scenario:

A new employee has the necessary skill level required to perform the job, but otherwise does not seem to be fitting in with the rest of the staff. How do you handle this situation?

Commentary

7 Key Points to Growing Your Workers' Compensation Line of Business

By Stephen P. Ellerman

With the rising costs of diagnostic imaging, some health plans and Medicare have aggressively lowered radiology rates and now utilize radiology benefit managers (RBMs) to authorize scans. As a result, practices have felt a squeeze in traditional sources of revenue, forcing radiology providers to diversify their portfolios. Today, Workers' Compensation has the potential to open up a steady and reliable stream of new referral and revenue sources. Following are seven key things to know about building your Workers' Compensation line of business.

1. Significant business opportunity.

Workers' Compensation is an \$80 billion industry, which spends approximately \$3 billion a year on diagnostic radiology. A significant portion of referrals (about 70%) are for advanced imaging, eg, MRI and CT scans. These imaging services are critical to Workers' Compensation, as they provide fast, comprehensive information on which to determine the nature and severity of an injury, as well as an accurate diagnosis and treatment plan for an injured worker. As such, this segment presents significant opportunity to increase your volume of business.

2. Ease of doing business.

In addition to reduced rates, traditional healthcare presents a slate of other challenges, such as complex billing, delayed pay-

ments, and hassles in obtaining authorizations from RBMs. Workers' Compensation, on the other hand, is a relatively easy market segment in which to work. The industry utilizes a fee-for-service payment model, so there are no complex capitulations, deductibles, or copayments to track and collect. In addition, rather than deal with traditional means of claims submission—via snail mail or fax—Workers' Compensation leverages electronic billing with automated acknowledgement of receipt, which serves to simplify billing and speed up the turnaround on payments.

3. Specific industry dynamics and players.

Insurance companies and third party claims administrators—commonly referred to as payers in Workers' Compensation—have found it advantageous to outsource the scheduling of diagnostic radiology exams to specialized Workers' Compensation radiology networks. Claims adjusters and nurse case managers typically do not have a way to locate and identify appropriate facilities. A radiology network, on the other hand, has a nationwide database of credentialed providers, and can easily look up their location, type of equipment, secondary languages, hours of operation, and more. This data makes it easier to find an appropriate imaging facility. To build your Workers' Compensation business, all you need is to find the right network partner.