HEALTH CARE

OIG Allows Hospital to Provide Free In-Home Patient Care

By Julia P. Boisvert | March 12, 2019

In an Advisory Opinion published March 6, 2019, the Office of Inspector General (the "OIG") declined to impose sanctions on a nonprofit medical center for a program to provide free, in-home follow-up care to qualifying patients with congestive heart failure or chronic pulmonary disease that the hospital certifies are at high risk of admission or readmission to a hospital. Even though the OIG found that these services would constitute remuneration to the patients, it declined to impose sanctions under the Anti-kickback Statute or Civil Monetary Penalties Law.

Under the arrangement, the hospital would offer qualifying patients two visits from a community paramedic each week for approximately 30 days following enrollment. Each visit would last approximately 60 minutes and would include a medication review, assessment of the patient's need for follow-up appointments, review of compliance with the discharge plan and a physical assessment, among other services. The hospital would not bill patients or payers for these services and would not shift costs to any other payer or individual.

The OIG found that the services constituted remuneration to the patients that could influence the patient to choose the hospital for federally reimbursable items or services, implicating the Civil Monetary Penalties Law and the Anti-kickback Statute. The arrangement also would not satisfy the "Promotes Access to Care" exception to the Civil Monetary Penalties Law.

Despite this, the OIG declined to impose sanctions on the arrangement. Two reasons stand out. First, the OIG stated that the benefits of the program outweigh the risks of any inappropriate steering. The OIG favorably cited the hospital's stated goal of improving health for patients with chronic conditions. It was also encouraged by the patient safeguards included in the arrangement, such as a patient's continued ability to select his/her preferred provider.

Second, the OIG found that the arrangement was unlikely to lead to increased costs to federal health care programs or patients. Although the arrangement may increase the utilization of health care services in reminding patients to appropriately follow up on their care, the arrangement could ultimately decrease the utilization of federally reimbursable services if the arrangement achieved the hospital's goal of improving patient health and reducing hospital admissions.

Interestingly, the OIG also referenced its recent statement that the reach of the Anti-kickback Statute and Civil Monetary Penalties Law may impede beneficial arrangements that would advance coordinated care and decrease the costs to federal health care programs. It recognized that the proposed arrangement may help further these goals. This opinion by the OIG along with other statements by the Department of Health and Human Services, indicates a growing willingness to entertain narrowly tailored programs that lower costs while improving care coordination.

If you have any questions about this bulletin, please contact:
Julia P. Boisvert at 860.240.6018 or jboisvert@murthalaw.com
Mindy S. Tompkins at 860.240.6063 or mtompkins@murthalaw.com
Stephanie S. Sobkowiak at 203.772.7782 or ssobkowiak@murthalaw.com

Paul E. Knag, Co-Chair
203.653.5407
pknag@murthalaw.com

Stephanie S. Sobkowiak, Co-Chair
203.772.7782
ssobkowiak@murthalaw.com

Heather O. Berchem
203.772.7728
hberchem@murthalaw.com

Julia P. Boisvert
860.240.6018
jboisvert@murthalaw.com

Daniel J. Kagan
203.772.7726
dkagan@murthalaw.com

Mindy S. Tompkins
860.240.6063
mtompkins@murthalaw.com

MURTHA CULLINA
ATTORNEYS AT LAW

BOSTON + HARTFORD + NEW HAVEN + STAMFORD + WHITE PLAINS + WOBURN   **MURTHALAW.COM**