

## Free Transportation for Patients

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If your physician practice provides free transportation for its patients – be careful! Providing free transportation to patients or their family members is fraught with regulatory peril. On March 6, 2009, the Department of Health and Human Services, Office of the Inspector General (“OIG”) issued an Advisory Opinion<sup>1</sup> providing some further clarification on the provision of complimentary local transportation by healthcare facilities.

In general, providing free transportation services to patients could create problems since it implicates both the civil monetary penalty (“CMP”) law<sup>2</sup> and the anti-kickback statute<sup>3</sup>. Legislative history shows that Congress did not intend to impose penalties for free local transportation of nominal value, which the OIG has interpreted to be no more than \$10 per trip or \$50 per patient in the aggregate annually<sup>4</sup>.

The recent Advisory Opinion issued by the OIG analyzed complimentary local transportation provided by a skilled nursing facility for friends and families of its residents. In concluding that the free transportation would not constitute grounds for the imposition of civil monetary penalties under the CMP law or administrative sanctions under the anti-kickback statute, the OIG enumerated the following reasons:

- The transportation would not be for residents to obtain Federally-payable items or services from the nursing facility or for the benefit of the nursing facility’s referral sources.
- The free services are provided to friends and families of all residents, not selectively to targeted populations of Federal health care program beneficiaries.
- The type of transportation – a van owned by the nursing home and driven by its employee – is reasonable.
- The services will only be offered locally.
- The services will only be advertised locally and marketing will be reasonably limited.
- The availability of local public transportation is limited and a toll bridge separates the nursing facility from part of its primary service area.
- The transportation is consistent with the nursing home’s mission to provide residents with quality care through increased companionship.
- The cost for the services will not be claimed on any cost report or claim or otherwise shifted to any Federal health care program.

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<sup>1</sup> OIG Advisory Opinion No. 09-01, March 6, 2009.

<sup>2</sup> 42 U.S.C. 1320-7a(a)(5).

<sup>3</sup> 42 U.S.C. 1320-7b(b).

<sup>4</sup> 65 Fed. Reg. 24400, 24411 (April 26, 2000).

The OIG cautioned that although free transportation may have important and beneficial effects on patient care, it may also be a part of fraudulent or abusive schemes that lead to inappropriate steering of patients, overutilization and the provision of medically unnecessary services. Therefore, arrangements involving free transportation must be evaluated on a case-by-case basis and may require the review of additional factors.

Although the OIG had previously issued guidance on the provision of free local transportation by hospitals and transportation that does not exceed nominal value, the OIG's most recent Advisory Opinion provides much anticipated guidance to non-hospital based providers. Ambulatory surgery centers and physician practices may consider whether structuring their transportation programs within the parameters of this Advisory Opinion would be sufficient to satisfy both the CMP law and the anti-kickback statute. However, prior to implementing a free transportation program, facilities are urged to consult their own healthcare attorney concerning their situation and any specific legal questions that they may have to evaluate the benefits and risks of such program.