

Advisory Opinion: Free van shuttle services to medical facilities

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On October 21, 2015 the Department of Health and Human Services Office of Inspector General posted Advisory Opinion No. 15-13. This Opinion relates to a request for Advisory Opinion about a plan to offer free van shuttle services to certain medical facilities in an integrated health system. The Office of Inspector General (the "OIG") concluded that although the proposed arrangement could potentially generate prohibited remuneration under the anti-kickback statute if the intent to induce referrals were present, the OIG would not impose administrative sanctions in connection with the proposed arrangement. In its analysis, the OIG considered a number of factors including: (i) the service would not be determined in a manner related to the past or anticipated volume or value of federal healthcare program business; (ii) the service would not include air, luxury or ambulance level transportation; (iii) van drivers would not be paid on a per person or per patient transported basis; (iv) the longest shuttle circuit was approximately 18 miles and was therefore distinguishable from those arrangements which sought to "leap frog competitor facilities and recruit beneficiaries from beyond the offerors' primary service areas"; (v) the program was not marketed or advertised to the general public; (vi) the cost of the program is not shifted onto Medicare, a state healthcare program, other payers, or individuals; (vii) the arrangement was unlikely to subsidize the practices of private physicians; and (viii) local public transportation in the area was limited. While an advisory opinion cannot be relied upon by anyone other than the requesting party, these factors should certainly be given consideration should an entity of which to establish a free transportation program.

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