



Health Care Fraud and Abuse Alert: OIG Approves Referral Relationship Between Placement Agency And Retirement Community Operator Under Anti-Kickback Statute

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On January 13, 2014, HHS's Office of the Inspector General (OIG) issued an advisory opinion holding that the contractual relationship between an operator of retirement communities (the Operator) and an unrelated placement agency (the Agency) did not violate the federal Anti-Kickback Statute. Under the parties' arrangement, the Agency refers residents to the Operator's retirement communities and is paid a percentage of the fees charged during the initial months of a resident's stay. Although the Operator also operated skilled nursing facilities, this arrangement only applied to referrals made to the Operator's retirement communities.

After concluding that the percentage-based compensation arrangement for referrals made by the Agency could potentially generate compensation that would be prohibited under the Anti-Kickback Statute, OIG decided against imposing administrative sanctions because it perceived the actual risk of a violation to be low based on the following facts:

- (1) The Agency's fee was based only on the initial months of the referred resident's rent and specifically excluded services covered by Medicare or Medicaid;

- (2) The parties' arrangement prohibited the placement of any individuals who were known to rely on Medicare or Medicaid to pay for any part of their stay in the Operator's communities;
- (3) The Agency was referring residents for housing and services that are not covered by federal health care programs; and
- (4) The Operator did not track referrals or direct its residents to particular providers for the purpose of generating services reimbursable by Medicare or Medicaid.

Although the advisory opinion, by its terms, is solely limited to the facts presented by the parties who requested the opinion, the analysis provided by OIG provides useful guidance on structuring appropriate compensation arrangements between entities under the Anti-Kickback Statute. The opinion is designated OIG Advisory Opinion No. 14-01.

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