

PUBLICATION

OIG Allows Health Care System to Provide Discounted Training to Fire Department Personnel in Advisory Opinion 20-01

February 27, 2020

A non-profit health care system has received a green light from the Office of Inspector General (OIG) to provide discounted training to local fire department personnel. The OIG reviewed the arrangement in Advisory Opinion No. 20-01, issued in January 2020, and determined that the discounted services, as proposed by the non-profit, present a low risk of fraud and abuse under the federal Anti-Kickback Statute and do not constitute grounds for the imposition of penalties under the civil monetary penalties (CMP) law.

The non-profit has a charitable mission to provide high-quality, cost-effective health care to its patients, which aligns with the statutory requirement for non-profit hospitals in the state in which it is located. In addition to several hospitals and other health care entities, the non-profit operates a medical training facility.

The training facility is a state-of-the-art facility designed to provide hands-on clinical training to health care professionals seeking to refine existing clinical skills and to acquire new skills. The training facility allows emergency personnel to learn how to deal with challenging situations in the field (e.g., a patient who is suspended upside down in a car) that no other hospital in the surrounding area can provide.

As part of its community benefit programs, the non-profit offers a discount on certain costs for sessions at the training facility that are in furtherance of its charitable mission. The non-profit utilizes a two-part test to determine whether a training session qualifies for a discount. First, it evaluates whether the session educates health care providers who have a direct impact on patient care in the community to determine whether the session is consistent with the non-profit's charitable mission. Second, the non-profit considers whether the session constitutes an education-related cost under its state's statutory definition of *community of benefits*. If both criteria are met, the training session is eligible for a discount.

A local fire department in the non-profit's city has been using the training facility since 2014 to train personnel on advanced airway management techniques, allowing them to meet state credentialing standards. The non-profit concluded that these fire department training sessions qualified for a discount. Pursuant to a city ordinance, the fire department is the only entity that may furnish emergency ambulance services within city limits.

The OIG has long expressed that arrangements for free or below-market items or services to actual or potential referral sources are suspect and may violate the federal Anti-Kickback Statute. The statute has been interpreted to cover any arrangement when one purpose of the remuneration is to obtain money for the referral of services or to induce further referrals.

In determining that the actions pursuant to the arrangement between the non-profit and the fire department would present a low risk of fraud and abuse under the federal Anti-Kickback Statute, the OIG's analysis turned on four factors:

- The only medical transportation services the fire department provides are emergency transport services. The number of individuals needing this treatment is not related to the existence or

implementation of the discounted training sessions.

- The existence of a specific protocol for objectively selecting the destination for emergency ambulance transports and a written agreement expressly disclaiming any referral requirements sufficiently mitigates the risk the fire department would steer patients to the non-profit as a result of the discounted training sessions. This is supported by the fact there has been no statistically significant changes to the fire department's transports to the non-profit.
- The discounted training sessions may benefit the community by improving the quality of emergency ambulance services in the city.
- The benefit of the discounted training sessions inures to the public and not private benefit. The discount reduces the funds the city must allocate for clinical training of the fire department personnel.

Although the OIG concluded the proposed arrangement could potentially generate prohibited remuneration under the Anti-Kickback Statute if the requisite intent to induce or reward referrals of federal health care program business were present, the OIG decided the proposed arrangement would not constitute grounds for the imposition of penalties under the Anti-Kickback Statute.

Tie-In to Existing Guidance

OIG Advisory Opinion No. 20-01 follows a longstanding body of favorable OIG guidance addressing relationships with government-operated ambulance services (most recently [18-08](#) and [13-17](#)). In these opinions, the OIG typically takes a holistic look at the relationship to determine what steps have been taken to mitigate the associated risk. With respect to the arrangement at issue in Advisory Opinion 20-01, the OIG found that the benefit to the public and the low risk of fraud and abuse justified another favorable ruling concerning a relationship with a government-operated ambulance service.