

# PUBLICATION

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## OIG Permits the Sale and Donation of Medical Debt to Debt Forgiveness Organization

August 2020

**In its Advisory Opinion (AO), AO 20-04, HHS Office of the Inspector General (OIG) determined that the requestor, a charitable organization that locates, buys and forgives patient medical debt, may purchase or receive as donation, qualified medical debt from health care providers such as hospitals and large independent physician practices. Normally the requester buys patient medical debt at arm's length from debt purchasing companies. Under the proposed arrangement, the requestor would deal directly with and purchase from or receive a donation of the patient debt directly from hospitals and certain other providers.**

Under the proposed arrangement, the requestor plans to purchase, or receive as donation, medical debt from providers and in turn forgive the medical debt for patients whose income is less than 200 percent of the federal poverty level, who have hardships that make paying off their medical debt difficult or impossible, or who have liabilities exceeding their assets.

Although the proposed arrangement implicates the Beneficiary Inducement prohibitions of the Civil Monetary Penalty Law (CMP) and the federal anti-kickback statute (AKS), the OIG determined that it would not impose sanctions under the CMP and found that the arrangement posed a low risk to the AKS.

One, the OIG found the proposed arrangement to be quite different from practices that routinely waive Medicare cost sharing, which the OIG has long thought to be problematic. Unlike the routine waiver arrangements, the requestor would forgive medical debts only after the provider has attempted and failed to collect the debt and after an individualized financial need determination. The OIG believes that this would reduce the risk of unlawful inducements and influence on a health care beneficiary's future selection of the provider.

Two, providers selling or donating debt to the requestor would have limited ability to use the program as a tool to generate future business, because the providers cannot publicize the sale or donation of debt to the requestor. Furthermore, the requestor, not the provider, notifies the patients of the debt forgiveness and so the patient would likely have limited or no knowledge of the provider's role in the debt forgiveness.

Three, OIG determined that the proposed arrangement would not lead to increased costs to federal health care programs. OIG stated that the donation of debt after it is incurred and deemed uncollectible poses less risks than arrangements that subsidize an ongoing payment obligation or waive a payment obligation in advance of attempts at payment.

Four, OIG noted that the sale or donation of the medical debt by a third-party collection company to the requestor results in the same outcome as a direct sale or donation by the hospital or other provider to the requestor. OIG explained that providers generally try to collect medical debts and when they are unable to do so, they write off the debt or sell it to a third party. Under the proposed arrangement, the requestor would use the same criteria for determining debt forgiveness whether it buys the debt from a third party or directly from a provider.

Five, the provider donors have limited control over how their donations are used to forgive medical debt. Specifically, the provider donors are not permitted to restrict donations to specific treatment types, to target specific patients, or to target patients covered by a particular type of insurer.

For the above reasons, the OIG determined that the purchase or donation of debts would be permitted under the AKS and CMP.

While this advisory opinion applies specifically to the requestor and cannot be relied upon by other providers, the OIG's determination indicates that there may be opportunities for hospitals and large physician practices to sell or donate medical bad debts directly to charitable organizations as long as they include the same mitigating factors which are described in the opinion.