

# PUBLICATION

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## OIG Permits Medicaid Enrollment Application Assistance for SNF and HHA Patients

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**On December 23, 2020, the OIG published Advisory Opinion 20-06, concluding that it would not impose penalties or sanctions under either the beneficiary inducement prohibitions of the civil monetary penalty statute (CMP) or the Anti-Kickback Statute (AKS) related to a management company providing Medicaid enrollment application assistance services to patients of skilled nursing facilities (SNFs) and home health agencies (HHAs) affiliated with the management company.**

### Overview of the Facts

The Requestors are a management company that provides financial, marketing and administrative services to SNFs and HHAs, and two SNFs and an HHA that are affiliated with the management company. Under the proposed arrangement, the affiliated SNFs and HHA would refer individuals they believe are eligible for Medicaid to the management company for Medicaid enrollment application assistance (Services). The individuals referred would be current patients or, rarely, individuals who have already selected the affiliated entity, but are not yet patients. The management company would provide assistance completing the application, compiling documentation, meeting deadlines and complying with applicable requirements. These Services would not include the provision of any health care items or services.

The affiliated SNF would pay the management company for Services provided to individuals it refers, unless the individual needs to reduce his or her assets to qualify for Medicaid. Individuals referred by the affiliated HHA would be responsible for paying the management company for the Services directly. When the affiliated SNFs paid for the Services, they would include them on the social services line in their cost reports to CMS.

Under the proposed arrangement, the management company would charge fees that are below fair market value. However, the fees would be based on a set fee schedule that would be applied evenly regardless of source of referral or who was paying for the services. The management company would advertise the Medicaid application assistance services on its website and in other marketing materials targeted at unaffiliated SNFs and HHAs, but would not target referral sources for the affiliated entities or prospective patients. The affiliated SNFs and HHA would not advertise these services.

### Legal Analysis

The OIG determined that the provision of Services at below fair market to beneficiaries and the payment for Services by the affiliated SNFs on behalf of beneficiaries would both constitute remuneration under the applicable statutes. However, based on an analysis of the exception for promoting access to care, the OIG concluded that the arrangement would not be subject to civil monetary penalties under the beneficiary inducement prohibitions. This was based on the OIG's determination that the arrangement (1) would improve the ability for Medicaid-eligible patients to obtain medically necessary items and services payable by Medicaid; (2) was unlikely to interfere with clinical decision-making or increase federal health care program costs (beyond the cost associated with individuals receiving Medicaid benefits for which they were eligible); and (3) would not pose patient safety or quality-of-care concerns.

Similarly, the OIG's AKS analysis concluded that the arrangement had sufficient safeguards and would not warrant sanctions under the AKS. Analyzing the proposed arrangement, the OIG highlighted that the arrangement would only involve individuals who had already elected to receive care from an affiliated SNF or HHA and that prospective patients of those entities would not be targeted by the management company. The OIG's analysis also emphasized that the individuals who received assistance would be subject to an independent determination of eligibility by the Medicaid program.

### **Comments**

This Advisory Opinion demonstrates OIG's analysis of an arrangement that includes remuneration that satisfies the Promotes Access to Care Exception. A balance of safeguards is needed for an arrangement meant to assist individuals who have selected a certain SNF or HHA for their health care needs. The fact that this assistance would result in qualified individuals receiving Medicaid benefits for which they are eligible helps ensure access to care is supported, so long as the necessary safeguards are in place.

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