

OIG Approves Per Diem Payments to Physicians for On-Call Coverage

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Payment for call coverage has become a major issue throughout the country as physicians are increasingly asking for payment for providing call availability. Traditionally, call coverage has been seen as part of the physician's medical staff obligation. However, physicians are beginning to question traditional "on-call" coverage obligations for a number of reasons, including the fact that resulting services are quite often uncompensated and carry higher risks of malpractice claims. On the other hand, hospitals are required to maintain physician coverage in fulfillment of their EMTALA obligations.

Payment of compensation to physicians for providing on-call availability can raise significant regulatory issues and needs to be carefully structured. Call coverage payments can be viewed as remuneration that is intended to induce or influence referrals to the hospital in violation of the Medicare Anti-Kickback Statute. On-call reimbursement programs must be artfully crafted to reduce regulatory risk. The Office of Inspector General ("OIG") has issued a handful of advisory opinions addressing on-call coverage payments over the years that provide some guidance on the factors that the OIG will look at when determining whether an arrangement may violate the Anti-Kickback Statute.

On October 30, 2012, the OIG of the U.S. Department of Health and Human Services posted Advisory Opinion No. 12-15 ("Advisory Opinion") which approved an arrangement that provided per diem payments to physicians for providing on-call coverage. The Advisory Opinion addresses an existing arrangement under which a hospital pays a per diem fee to physicians for providing on-call coverage for the hospital's emergency department. The OIG found that the arrangement described in the Advisory Opinion would not constitute grounds for the imposition of sanctions under a variety of federal laws, including the Federal Anti-Kickback Statute.

Under the arrangement described in the Advisory Opinion, a hospital pays a per diem fee to specialist physicians to provide unrestricted call coverage for the emergency department. All specialists on the hospital's medical staff are offered the opportunity to participate in the call arrangement. Physicians who elect to participate in the program enter into one-year written agreements containing automatic renewal provisions, under which they agree to serve on the call coverage panel. The arrangement is limited to specialists who are only required to provide "unrestricted call" which does not require physical presence at the hospital during the call time but requires availability within 30 minutes. Physicians who participate must agree to provide the inpatient care required by any patient that is admitted by the physician. The participating physician is also required to provide certain follow-up care in their offices following discharge of the patient. A uniform methodology is used by the hospital to allocate call coverage equitably among participants within each specialty. Physicians are monitored for compliance with the program requirements.

The hospital compensates physicians who agree to participate in the program on a per diem fee. A fixed amount is allocated to the call program and is divided by 365 in order to ascertain the daily fee. Physician participants in the call program are paid the per diem fee regardless of whether they are actually called or consulted during the day that they are on call. The hospital also hired an independent consultant to evaluate the per diem rates and certified that the per diem rates paid under the arrangement are commercially reasonable and fair market value.

for the services provided.

The hospital certified that the program was created because of a shortage of experience in the neurosurgery and neurology specialties and because many members of its medical staff no longer wished to take call for a variety of reasons.

Although the Advisory Opinion is only binding to the requesting party, it does provide some insight into the factors that the OIG considers when examining the structure of “call pay” arrangements. The arrangement described in Advisory Opinion No. 12-15 contained a number of safeguards to dilute any incentive that the payments could create an inducement to refer patients to the hospital for inpatient services or other services that the hospital provides. This opinion and previous advisory opinions covering call coverage arrangements provide useful guidance to hospitals who are attempting to structure call payment arrangements or to physicians who may be proposing compensation for providing on-call availability.

You can access the entire Advisory Opinion No. 12-15 at the following link:

<https://oig.hhs.gov/fraud/docs/advisoryopinions/2012/AdvOpn12-15.pdf>

For more information regarding call coverage issues and other health law and compliance issues, contact John H. Fisher, CHC, CCEP at Ruder Ware.

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