

## **Provision of Complimentary Transportation Services To Patients: *Good Business or Regulatory Nightmare***

By [Stuart J. Vogelsmeier](#)

As hospitals are aware, HIPAA added a fraud and abuse provision which provides that a person who offers or transfers to a Medicare or Medicaid patient something of value that the person knows or should know is likely to influence the patient's selection or a particular provider may be liable for civil monetary penalties of up to \$10,000 for each act (referred to as the "CMP"). One issue that hospitals have struggled to answer is whether providing complimentary transportation is likely to be subject to the CMP.

The OIG has not developed a regulatory safe harbor or exception to the CMP for complimentary transportation by hospitals. The OIG stated the following in 2002: "Offering valuable gifts to beneficiaries to influence their choice of a Medicare or Medicaid provider raises quality and cost concerns. Providers may have an economic incentive to offset the additional costs attributable to the giveaways by providing unnecessary services or by substituting cheaper or lower quality services".

In 2005, the OIG stated, "The plain language of the CMP prohibits offering free transportation to Medicare or Medicaid beneficiaries to influence other selection of a particular provider, practitioner or hospital." However, at the same time, the OIG stated that hospitals can offer free local transportation of nominal value, which they have interpreted as no more than \$10 per trip, or \$50 in the aggregate on an annual basis.

In December of 2002, the OIG announced that they are considering developing some type of regulatory safe harbor or exception. This safe harbor, however, has never been published. While they evaluate the possible regulatory solutions, the OIG has said that they will not impose sanctions on hospital based transportation programs that:

- Were in existence on August 30, 2002.
- Provide transportation on a uniform basis without charge or at reduced charges to all patients and families.
- Provide transportation only to and from the hospital.
- Provide transportation only within the hospital's primary service area.
- Do not claim the costs of the transportation on cost reports or shift the costs to Medicare.

- Do not provide ambulance transportation.

There were two OIG Advisory Opinions during 2011 on this topic which shed only a slight bit more light on the issue. (Advisory Opinions are binding only on the parties who requested the opinions, and they cannot be relied upon by third parties. These opinions are, however, instructive on the OIGs enforcement policy).

Advisory Opinion 11-02 approved a plan to provide complimentary van transportation service to patients from physician offices located on, or contiguous to, the hospital's campus to the hospital if the patients required further treatment and cannot transport themselves. While the aggregate value of the transportation services to each patient could exceed \$10 for one trip or \$50 on an annual basis, this opinion does have very unique facts:

- The patients would not be transported to locations off the hospital's campus.
- The program anticipated transporting approximately 100 patients and their families per year.
- The average transport would be approximately one-fourth of a mile.

Advisory Opinion 11-16 approved a hospital's sophisticated transportation plan to transport pediatric patients with catastrophic illnesses to an internationally known children's research hospital for the purpose of participating in clinical research trials. Although 70 percent of the patients were transported over 35 miles, this transportation plan stands on its own because:

- The OIG felt it was implausible to think that the hospital, already faced with more qualified patient applicants than it can accommodate, provided the transportation services to generate additional referrals when the hospital receives less than 25 percent of the cost of providing care through payments from third party payors.
- The hospital focused on treatment and cures of catastrophic diseases in children, and the OIG felt that such services typically are not susceptible to overutilization.
- The vast majority of the hospital's patients are on clinical research protocols not offered elsewhere. Therefore, it was deemed unlikely that the hospital's provision of transportation services would cause a patient to seek services at this hospital at the expenses of another facility.

In addition to the factors discussed by the OIG in the recently issued Advisory Opinions, the OIG has also considered the following factors when examining complimentary local transportation programs:

- The availability of economical public transportation.
- Whether or not the free transportation is advertised.
- Whether the free transportation is targeted at profitable treatments or patient populations.
- Whether luxury transportation is offered.

- Whether the free transportation services are available only to individuals who have no reliable and regular means of transportation.

We are aware that some hospitals have documented compliance with the \$10/\$50 value threshold by obtaining competitive bids for transportation services and by issuing patients “triptick” under which the patient can obtain up to five, \$10 rides per year. In absence of compliance with the \$10/\$50 threshold, hospitals have sought to meet the six conditions announced by the OIG (set forth above) in December of 2002. If a hospital arrangement cannot satisfy those six conditions, other arrangements will be subject to a case-by-case review under the CMP to ensure that no improper inducement exists.

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