

OIG Seeks Comments on Anti-Kickback Statute and Beneficiary Inducements as Part of its Regulatory Sprint to Coordinated Care

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On August 24, 2018, the Office of Inspector General (OIG), Department of Health and Human Services (HHS) published a request for information, seeking input from the public on potential new safe harbors to the Anti-Kickback Statute and exceptions to the beneficiary inducement prohibition in the Civil Monetary Penalty (CMP) Law to remove impediments to care coordination and value-based care. The broad scope of the laws involved and the wide-ranging nature of OIG's request underscore the potential significance of anticipated regulatory reforms for virtually every healthcare stakeholder.

The request for information follows a similar request by the Centers for Medicare and Medicaid Services (CMS) published on June 25, 2018, regarding the physician self-referral law, commonly known as the Stark Law. Both of these requests are part of HHS's "Regulatory Sprint to Coordinated Care," which is being spearheaded by the Deputy Secretary as an effort to address regulatory obstacles to coordinated care.

The Anti-Kickback Statute prohibits offering, paying, soliciting or receiving anything of value in exchange for or to induce a person to make referrals for items and services that are payable by a federal health care program, or to purchase, lease, order or arrange for or recommend purchasing, leasing or ordering any services or items that may be covered by a federal health care program. The beneficiary inducement prohibition in the CMP Law authorizes the imposition of civil money penalties for paying or offering any remuneration to a Medicare or Medicaid beneficiary that the offeror knows or should know is likely to influence the beneficiary's selection of a particular provider or supplier of Medicare or Medicaid payable items. Many value-based payment models implicate these statutes, and the OIG acknowledges that they are widely viewed as impediments to arrangements that would advance coordinated care.

While the request for information arises in the context of a concerted focus on care coordination and value-based payment, the request is wide-ranging and effectively invites stakeholders to provide comments on a broad range of potential issues under both the Anti-Kickback Statute and the beneficiary inducement prohibition. The OIG solicits comments across four general categories: (1) promoting care coordination and value-based care; (2) beneficiary engagement, including beneficiary

incentives and cost-sharing waivers; (3) other regulatory topics, including feedback on current fraud and abuse waivers, cybersecurity-related items and services, and new exceptions required by the Bipartisan Budget Act of 2018; and (4) the intersection of the Stark Law and the Anti-Kickback Statute.

The OIG encourages individuals and organizations who previously submitted comments to CMS in response to its request for information on the Stark Law to also submit comments directly to OIG, even where those comments may be duplicative, to ensure they are considered by OIG as it exercises its independent authority with respect to the Anti-Kickback Statute and CMP Law.

Comments are due by October 26, 2018.

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National Law Review, Volume VIII, Number 239

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