



HEALTH CARE BLOG

OIG Opinion on Donation of Telehealth Equipment

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A recent Advisory Opinion (Advisory Opinion 18-03) from the Office of Inspector General (OIG) of the Department of Health and Human Services addresses potential kickback issues involved in the donation of telehealth equipment. The OIG has issued opinions addressing technology donation in the past, but not directly involving telemedicine and not involving services that were expected to result in billings to federal health care programs. (See OIG 99-14 and 11-12 relating to technology donations).

The proposed arrangement involved a provider donating the use of telehealth equipment, as well as certain maintenance services related to that equipment, to a county clinic located eighty miles away from the provider site. The clinic was not made the owner of the equipment, but it was housed in the clinic's facilities. The provider was able to reclaim the equipment from the clinic at any time. The parties had an existing referral relationship but the physical distance between locations placed burdens on patients who were referred for care to the provider from the clinic. The donation was intended to better facilitate the availability of telemedicine consultations by the provider to patients of the clinic. It was contemplated that the clinic would bill an originating site fee and the provider would bill for professional services relating to telemedicine encounters.

The OIG acknowledged that the value of the donated equipment and services could be considered to be prohibited "remuneration" under the federal Anti-Kickback Statute. By providing the donated items, the provider would be providing the clinic with an opportunity to provide and bill a service for telehealth encounters. Facilitating patient encounters could also be viewed as a referral from the clinic to the donating provider. The arrangement could easily be seen as providing remuneration to the clinic to induce the clinic to make referrals for the provider's telehealth professional services.

The OIG recognized that one purpose of the arrangement would be to induce referrals from the clinic to the provider. The OIG nevertheless found that the arrangement would present a low risk of fraud and abuse under the Anti-Kickback Statute. The OIG seemed to be influenced by the increased access the arrangement provided to the clinic's patients. The distance between the clinic and the provider made services very inconvenient to patients and this inconvenience was remedied by the telemedicine arrangement. In this respect, the OIG seemed to be willing to tolerate some level of remuneration when patients are benefited by making services more conveniently available.

The OIG also seemed to be influenced by certain safeguards integrated into the proposed structure. For example, the clinic was free to refer patients to other providers and patients were advised they could receive the services from other qualified providers. Also, the equipment provided was not restricted from compatibility with systems other than those of the provider. In other words, the equipment did not create a "captive" relationship between the parties.

The OIG stated that its view may have been different if the arrangement was likely to result in improper steering of patients to the provider's pharmacy. As described in the request, the OIG found no tie to referrals to the provider's pharmacy. Only patient interactive professional consultation was provided. The OIG pointed out that this point may change if the provider was to offer mail-order pharmacy to

patients who receive telemedicine services.

The opinion is limited to the specific program and facts, but could be viewed as indicating sensitivity by the OIG to increased access opportunities that are created through telemedicine. At the same time, the specific facts concerning the distance between the providers and lack of opportunity to fill prescriptions or perform other ancillary services could indicate limitations on the extent of potential remuneration that the OIG might consider acceptable.

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