

## OIG Releases “Free Pre-Authorization” Advisory Opinion

On April 30, 2010 the Office of the Inspector released Advisory Opinion 10-04 relating to free pre-authorization services provided by several diagnostic imaging providers. The service providers, consisting of a clinic and a medical center, sought advice for whether providing free pre-authorization services would violate anti kickback legislation. In the opinion OIG states that, while these types of arrangements may potentially violate anti kickback laws, OIG would not impose sanctions, due to the low risk of abuse.<sup>1</sup>

In an attempt to lower costs and over utilization, many insurance companies require pre-authorization of imaging services.<sup>2</sup> In the arrangement proposed by the medical center, they would operate a call center, free of charge, to both patients and physicians as a go-between for the provider and the insurance company for pre-authorization. Prior to approving the proposal, OIG stated that if an insurance company requires physicians to pre-authorize, an external source providing such services for free, would be relieving the physician of a burden and expense. In turn, when linked to referrals, such services would violate federal anti-kickback law. Under the statute it is a criminal offense to knowingly and willfully offer any remuneration to gain referrals for services reimbursable by a Federal health care program.<sup>3</sup> Despite this the OIG cited several factors when deciding to approve of the free services.<sup>4</sup>

OIG referred to four reasons for allowing free pre-authorization services from the medical center. First, as the arrangement would not be targeting specific high volume physicians, but provide services to any patient or physician, there is a low risk of fraud and abuse. Second, the imaging providers would not be making payments,

but solely collecting and providing documentation. This compliance with all state and federal privacy laws provides additional safeguards to reduce the risk of fraud and abuse. Third, the call center must identify themselves as representative of the imaging providers and provide referring physicians will copies of all information given to insurers to supply transparency. Finally, the arrangement fulfills a legitimate business purpose independent of referrals.

OIG has in prior and current opinions expressed concern over the use of free (or any amount under fair market value) services furnished to a referring physician.<sup>5</sup> While OIG asserted that the opinion has no application to any other individual or entity, it helps to further explain the intricacies of how healthcare entities may interact.<sup>6</sup>

<sup>1</sup> “OIG Advisory Opinion No. 10-04” Office of the Inspector General, Advisory Opinion, May 6, 2010, Washington, D.C.: Department of Health and Human Services, p.2, 5.

<sup>2</sup> “The OIG Publishes an Advisory Opinion on Free Pre-Authorization Services” By Scott Thill, von Briesen & Harper, S.C., May 10, 2010, <http://blog.vonbriesenhealth.com/2010/05/10/the-oig-publishes-an-advisory-opinion-on-free-pre-authorization-services/> (Accessed 6/8/10).

<sup>3</sup> “Criminal Penalties for Acts Involving Federal Health Care Programs” 42 U.S.C 132a-7b (2003)

<sup>4</sup> “OIG Advisory Opinion No. 10-04” Office of the Inspector General, Advisory Opinion, May 6, 2010, Department of Health and Human Services: Washington, D.C., p 5-6.

<sup>5</sup> “OIG Opinion Approves Free Pre-Authorization Arrangement” The Health Law Partners, May 14, 2010, <http://www.healthlawattorneyblog.com/2010/05/oig-opinion-approves-free-prea.html> (Accessed 6/8/10).

<sup>6</sup> “OIG Advisory Opinion No. 10-04” Office of the Inspector General, Advisory Opinion, May 6, 2010, Washington, D.C.: Department of Health and Human Services, p.7.



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