

H e a l t h C a r e P r a c t i c e G r o u p

**OIG Addresses Exclusive Contracts Between
Ambulance Providers and Municipalities**

The Office of Inspector General (“OIG”) of the United States Department of Health and Human Services recently posted two Advisory Opinions regarding similar exclusive contractual arrangements between a municipality and a private ambulance company. Specifically, in OIG Advisory Opinions No. 09-14 and 09-15, the OIG concluded that although the contracts at issue required annual remittances by the ambulance companies to the municipalities, it would not impose administrative sanctions against the ambulance companies.

In Advisory Opinion 09-14, a private ambulance company entered into an exclusive three-year contract to provide local ambulance transport and primary emergency medical services (“EMS”) to a Township. The agreement requires the ambulance company to reimburse the Township an annual remittance of \$60,000 for the cost the Township incurs to answer ambulance transfer calls through its dispatch center. In Advisory Opinion 09-15, an ambulance company entered into an exclusive three-year contract to provide local ambulance transport and EMS to a city. Pursuant to the arrangement, the ambulance company pays the city an annual remittance of \$52,000 to offset the costs of the city fire department’s operation of emergency ambulance dispatch services and for monitoring the ambulance company’s performance.

In both Advisory Opinions, the ambulance company provides the municipality with exclusive emergency ambulance services. The municipality does not pay a fee for the ambulance service to the ambulance company and the ambulance company is entirely responsible for the maintenance and housing of its own vehicles and equipment. Furthermore, the municipalities do not supply personnel, equipment or public facilities for use by the ambulance company’s operations.

In reviewing the underlying arrangements in Advisory Opinions 09-14 and 09-15, the OIG undertook an analysis as to whether they violated the Anti-Kickback Statute. The Anti-Kickback Statute makes it a criminal offense to knowingly and willfully offer, pay, solicit or receive any remuneration to induce or reward for referrals of items or services reimbursable by a Federal health care program. The OIG indicated that “pay-to-play” arrangements similar to the arrangements reviewed clearly implicate the Anti-Kickback Statute because the ambulance companies provide remuneration to the municipality, either by bearing the costs of ambulance dispatch and/or quality of monitoring or providing an annual fee to the municipality, in return for an exclusive contract to provide emergency ambulance transport services, some of which will be reimbursable or payable by a Federal health care program. Nevertheless, the OIG concluded that there were several factors present in both arrangements which mitigated the risk of Federal health care program fraud and abuse. The factors identified by the OIG were:

- The arrangements were part of a comprehensive regulatory scheme by the municipalities to manage the delivery of EMS. The OIG noted that municipalities should have sufficient flexibility to organize local emergency medical transport systems efficiently and economically. Furthermore, the ambulance companies certified that the municipalities chose to enter the contracts in a manner consistent with the relevant government contracting laws.

- The ambulance companies certified that the arrangements provide compensation for the approximate costs of the municipalities' emergency ambulance dispatch services and/or the expense of monitoring ambulance performance. Thus, the ambulance companies were not overpaying the sources of referrals.
- The annual fee was not tied directly or indirectly to the volume or value of referrals between the parties.
- The arrangements were limited to EMS and do not involve substantive changes in the dispatch procedure already utilized by the municipality. Thus, the arrangements were unlikely to increase the risk of over-utilization and unlikely to lead to increased costs to Federal health care programs.
- The exclusivity of the contracts should not have an adverse impact on competition as the contracts were awarded after a competitive bidding process by the municipality.
- The potential for prohibitive remuneration inures to the public and not a private benefit. Under these arrangements, the public receives the financial benefit by enabling the municipality to receive reimbursement for the cost of emergency ambulance dispatch services and monitoring of the ambulance performance.
- The arrangements do not represent fundamental changes in the delivery of emergency response services in the municipality as the ambulance companies had contracted with the city for several years.

Although the OIG concluded in light of the totality of these factors that the contractual arrangements involved in Advisory Opinions 09-14 and 09-15 pose minimal risk of Federal health care program fraud and abuse and it would not impose administrative sanctions under the Anti-Kickback Statute, it is important to note that the OIG indicated that it might have reached a different result if the ambulance companies paid the municipalities remuneration not directly related to the provision of emergency medical transports covered by the contract, e.g., free or reduced cost equipment. Also, it is important to remember that Advisory Opinions pertain only to these particular arrangements. Accordingly, ambulance companies need to exercise extreme care when entering into exclusive contractual arrangements with municipalities that involve a remittance to the municipality in order to minimize their risk of running afoul of the Anti-Kickback Statute.

If you have any questions or concerns regarding these Advisory Opinions or contractual agreements between ambulance service providers and municipalities, please don't hesitate to contact Mark C. Rogers, Esq. (781-794-1600, mr Rogers@therogerslawfirm.com) in the Health Care Practice Group at The Rogers Law Firm.



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