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OIG reviews waiver of co-payments by municipality for ambulance fees

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In an opinion released September 28, 2004, the federal Office of the Inspector General ("OIG") of the Center for Medicare and Medicaid Services once again addressed a municipality's obligation to collect Medicare/Medicaid co-payments from residents for ambulance usage.

The opinion addressed a city which operates an ambulance service, and does not contract out for services. The city desired to implement an ordinance which requires it to bill and collect for ambulance service fees, but not collect out of pocket expenses such as co-payments from residents of the city. A unique part of this opinion in contrast to prior opinions is that the city desired not to collect out of pocket expenses from workers that do not reside in the city but that do pay city taxes as part of their income taxes.

It has long been held that the waiver or offer to waive co-payments due from users of ambulance services is generally prohibited by federal law, as it could constitute a kickback or bribe for the ambulance service contract.

In the past, in similar opinions regarding the waiver of residents' out of pocket expenses, the OIG has referred to a Medicare/Medicaid rule that exempts municipalities from having to collect co-payments. The OIG once again concluded that this situation would not constitute a violation of the anti-kickback law. The OIG further concluded that the workers that paid income tax to the city were tantamount to residents of the city, by virtue of the payment of these taxes.

The OIG reminded readers of the opinion that the ability to waive out of pocket expenses under this rule does not apply to municipalities that contract with ambulance services other than the municipality's own service. We note, however, that the OIG has concluded that there are other options for waiving out of pocket expenses if a municipality is desirous of doing so. For instance, and generally speaking, a municipality may assume the obligation of the out of pocket expenses of its residents if it pays those expenses on behalf of the residents. Thus, those opinions and this new opinion could possibly be read together to permit a municipality to cover those costs of not only residents but also persons that pay income taxes to the city since they work in a city or other municipality that imposes income taxes.

Any municipality or ambulance service looking to waive co-payments or other out of pocket expenses should seek an opinion from their attorney or an attorney proficient in this area of the law.

Bradley M. Pinsky advises his clients in these matters and has extensive experience structuring contracts between municipalities and ambulance services which address "insurance only" billing arrangements.