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**OIG issues opinion regarding waiver of Medicare Co-Payments**

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In advisory opinion number 04-06, dated June 14, 2004, the Office of the Inspector General ("OIG") released an opinion involving a fire district's plan to waive the co-payment obligation of patients of its ambulance service. Initially, the fire district questioned whether it could simply apply the taxes it collects from residents in place of the co-payment obligation of its patients. The fire district provides an ambulance service and bills for such services.

The question put forth was whether the fire district's plan would violate the federal anti-kickback law. The anti-kickback statute makes it a criminal offense to knowingly or willingly offer, pay, solicit or receive any remuneration to induce or reward referrals of items or services reimbursable by a federal health care program. The waiver of co-payment obligations is generally seen as an incentive offered to receive referrals of government insured patients, and is thus a federal crime. In many states, it is also a state crime.

The OIG did not answer the question put to it, but instead advised that the law does not require fire districts, as municipal corporations, to collect co-payments of persons from whom it collects taxes. Thus, the fire district, as a tax collecting entity, is permitted to collect the insurance only portion from patients. The OIG stated that the government does not view ambulance services provided to tax payers as a "free service".

Note that although the OIG redacted the name and state of the fire district, it presumably was not a New York State fire district, as fire districts are not permitted to bill for ambulance services.

Prior opinions of the OIG permit a municipality to assume the obligation of an ambulance service with which it contracts through the payment of a fee reasonably calculated to be the same amount of the co-payment obligations of patients. However, those patients must be resident tax payers.

The OIG also warned that a municipality that contracts with an ambulance service may not require that ambulance service to waive co-payments unless the municipality accepts that obligation on the patients' behalves.

Therefore, a municipality that desires to bill for ambulance services that it provides (as opposed to contracts for) may avoid collecting co-payments for its taxpayers.

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