

**CLIENT ALERT: May 5, 2009**

**OIG ISSUES GUIDANCE  
ON FREE TRANSPORTATION PROGRAMS**

On March 6, 2009, the Office of the Inspector General (“OIG”) issued an advisory opinion (Advisory Opinion No. 09-01) (“Advisory”) concerning a skilled nursing facility’s free transportation program for its residents’ friends and family. The Advisory provides parameters for the structuring and operation of transportation programs by health care facilities and identifies factors that may be considered potentially suspect under the anti-kickback and civil monetary penalties statute. The Advisory may be viewed at <http://www.oig.hhs.gov/fraud/docs/advisoryopinions/2009/AdvOpn09-01.pdf>.

Health care facilities that provide transportation services to patients, friends, family, and staff should be aware of the factors identified by the Advisory. These factors are not exclusive but should be considered in evaluating whether transportation services pose a risk of fraud and abuse:

- **Targeting Passengers** - Selection of passengers based upon a “diagnosis, condition, or treatment” that could increase the provider’s revenues, or selection “based on a patient’s insurance coverage” is viewed as suspect.
- **Advertising** - If a free transportation arrangement is marketed or advertised, it increases the risk that the arrangement may be viewed as an inducement for referrals.
- **“Luxury” or Specialized Transportation** - Limousines, ambulance transports, or airline tickets in contrast to a van/shuttle service are likely to be viewed as an improper inducement.
- **Geographic Area** - Free transportation services offered outside the provider’s primary service area may be subject to abuse; so-called “leap-frog” or other longer distance transports are potentially suspect.
- **Availability of Other Modes of Transportation** - The lack of available public transportation is an important factor and may render the provision of complimentary transportation services less suspect.
- **Transporting to Other Providers** - If a provider offers transportation to another provider, that arrangement may be viewed as providing an inducement for referrals from the second provider to the provider offering the transportation.
- **Costs** - The costs of any transportation program must be borne by the provider and not shifted to a federal health care program.

- **Other Considerations** - Institutions that provide Medicare or Medicaid reimbursable services may raise concerns about “Medicare and Medicaid mills that provide free transportation to attract patients.” However, the Advisory notes that a free transportation program that is “consistent with the [provider’s] mission” to “provide residents with quality care in a residential setting through increased companionship resulting from access to residents friends and families” is a factor supporting a finding that the program is not suspect.

Please contact us with any questions.