



Anti-Kickback & CMP Rules Amendment
OIG Comment Period Open

Between now and December 2, 2014, the Department of Health and Human Services' Office of the Inspector General (OIG) is accepting comments on a [proposed rule](#) that would amend the Anti-Kickback Statute and Civil Monetary Penalty (CMP) rules.

One possible new anti-kickback safe harbor would protect free or discounted local transportation for established patients of federal health care programs so that they can obtain medically necessary items or services. Restrictions on this safe harbor could include bans on the transportation being further than 25 miles, being marketed, and being provided by ambulance. Moreover, certain types of providers, including home health agencies, [could be declared ineligible](#) for this protection in some or all cases. Even if home health agencies are granted any safe harbor protection for free or discounted local transportation, OIG states that it is considering limiting that protection to taking a patient to non-referral sources, such as pharmacies.

OIG's CMP changes would include regulations implementing three exceptions to the definition of "remuneration" added in the Affordable Care Act. [One](#) would be where the remuneration "promotes access to care" and has a "low risk of harm" to either patients or the Medicare and Medicaid programs. Promoting access to care would mean making it easier to obtain medically necessary items and services. Having a low risk of harm would mean that, among other things, the remuneration would not likely affect a patient's safety or quality of care, or unnecessarily increase costs.

Other exceptions to remuneration would include [retailer rewards](#) programs that meet certain criteria, and an "offer or transfer of items or services for free or at less than fair market value after a determination that the recipient is in [financial need](#) and meets certain other criteria." OIG proposes to interpret a valid retailer reward as an item such as a coupon which is offered equally to people regardless of their health insurance status, and which is neither earned nor redeemed through the provision of an item or service reimbursed in whole or part by Medicare or any state health care program. Service providers such as hospitals would not be considered retailers. The financial need exception would be for items or services (not cash) that are not marketed, not tied

to other reimbursable services, and are “reasonably connected” to a patient’s medical care. Further, the provider would need to determine “in good faith that the individual is in financial need.”

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