

OIG Provides New Guidance For On-Call Arrangements

On May 21, 2009, the OIG issued Advisory Opinion 09-05 which addressed an on-call coverage arrangement between a hospital and physicians concerning coverage of emergent, uninsured patients. Under the analyzed arrangement, compensation will be based on a schedule of specific fee-for-service rates for actual services provided and claims submitted by the physicians related solely to these uninsured patients.

In analyzing the arrangement, the OIG indicated that it presents a low risk of fraud and abuse and that it would not impose sanctions. The opinion also contained some potentially helpful guidance regarding fair market value ("FMV"). Although the OIG is not authorized to opine on any aspects of FMV, it noted several features of the arrangement that "appear to support the certification" of the parties with respect to FMV. In particular, the Advisory Opinion stated:

"...unlike some on-call arrangements that pay regardless of actual emergency department calls, the Proposed Arrangement only reimburses physicians for time they actually spend providing services in the Emergency Department."

The OIG appears to be commenting on *per diem* payments (or other similar stipend structures), which are by far the most common on-call payment methodology in the marketplace. In Advisory Opinion 07-10, the OIG found favorably with respect to a particular *per diem* arrangement. While we believe that OIG Advisory Opinion 09-05 should not be interpreted as any disapproval of *per diem* payments, it appears that the OIG may regard stipends as perhaps riskier than payments which are tied to actual emergency department treatment encounters.

FMV Pitfall

Given the OIG guidance in the two Advisory Opinions, HealthCare Appraisers believes it wise to ensure that *per diem* rates for on-call coverage are established with consideration of the actual *burden* imposed on the physicians *at the particular emergency department*, including the frequency of emergent events requiring a response, the extent of unfunded care that is rendered, and other factors specific to the circumstances. Placing reliance upon market data to establish FMV for *per diem* payments may result in inappropriate compensation since available market data provides no distinction between, for example, high-volume and low-volume emergency departments.