



RURAL POLICY RESEARCH INSTITUTE

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Office of the Inspector General, Department of Health and Human Services
Attn: OIG-0936-AA10-P
Room 5521, Cohen Building
330 Independence Ave.
Washington, D.C. 20201

To Whom it May Concern:

The Rural Policy Research Institute Health Panel (Panel) was established in 1993 to provide science-based, objective policy analysis to federal policy makers. The Panel is pleased to provide comment on the proposed rule Revisions to Safe Harbors Under the Anti-Kickback Statute, and Civil Monetary Penalty Rules Regarding Beneficiary Inducements.

The Panel is encouraged by OIG's recognition that there are certain circumstances that warrant treating rural providers differently than those in urban geographies. The Panel offers comments on two specific aspects of the proposed rule that may impact rural areas.

Contribution Requirement

As the adoption of EHR systems increases and new technology and equipment is needed to upgrade and update existing systems, rural providers may be financially burdened by technology costs. Thus, and consistent with our reasoning provided in our comment letter to CMS regarding the Stark Law proposed rule, we recommend that OIG remove as many barriers as possible for rural providers seeking to enhance EHRs or deploy cybersecurity. Removing the contribution requirement barrier will allow rural providers to more quickly adopt necessary EHR and cybersecurity upgrades, which contribute to improved care and patient protections.

To reduce opportunities for fraud and abuse, the Panel recommends that donor-imposed contribution requirements not consider the volume and value of referrals. This requirement is critical to maintaining the integrity of the rule. Omitting this requirement may incentivize donation of technology for competitive advantage and referral capture instead of the goal of reducing the risk of cyberattack.

Local Transportation Exception

The Panel is pleased to see OIG is working to implement changes in the proposed rule that aim to address some of the social determinants of health, including transportation needs. The Panel supports OIG's proposal to increase the mileage range for the local transportation exception to 75 miles for rural areas.

However, the Panel notes that even with the extension to 75 miles, there are still small, rural tertiary centers that would be unable to provide transportation to patients who are greater than 75 miles distant. This is especially critical in frontier regions where access to any kind of health care may be

greater than 75 miles distant, and if an admission is required, may be greater than 150 miles further. The Panel suggests that in frontier areas, as defined using selected levels from either commuting codes or frontier and remote codes, (<https://www.ruralhealthinfo.org/topics/frontier#definition>), the distance from the health provider requirement should be greater than 75 miles.

While supporting increasing transportation distance limits, the Panel is concerned that this exception may be used by larger systems to bypass locally available health care. For example, a large health system may find that the cost to transport a patient from a distance could be more than made up in referral and care payments. This could create a situation in which patients bypass their local rural provider and travel to a larger health system that sees this exception as an opportunity to increase volumes and associated payments. One way to alleviate this concern and potential abuse of the exception would be to impose a medical necessity requirement that would preclude bypassing local providers unless the health care is not available closer to the patient's location and there is demonstrated financial or transportation need.

The Panel also commends OIG for recognizing the need to help patients access resources that are not related to medical needs but do relate to health outcomes, such as food pantries. The Panel enthusiastically supports these measures.

The Panel appreciates the opportunity to submit comments to OIG before the finalization of the rule.

Sincerely,

The Rural Policy Research Institute Health Panel

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