



OIG Opinion on Endoscopy Center Anesthesia

On June 1, 2012, HHS' Office of Inspector General (OIG) posted an [advisory opinion](#) regarding two proposed arrangements between an anesthesia service provider and outpatient surgery/endoscopy centers owned and operated by physician-owned professional corporations or limited liability companies. A detailed analysis of the opinion can be found in a recent [McDermott, Will, and Emory publication](#).

In this opinion, the anesthesia provider currently has a traditional exclusive relationship with the ambulatory surgical center (ASC) where the anesthesia provider is responsible for employing or contracting with sufficient personnel to meet all the ASCs' anesthesia coverage needs, and the anesthesia provider independently bills for its professional fees, the physician owners independently bill for surgical or procedural services, and the ASCs bills a facility fee.

The proposed arrangements discussed in the opinion include:

Arrangement A – The anesthesia service provider would continue to serve as the outpatient surgery/endoscopy center's exclusive provider of anesthesia services and would bill and retain all collections from patients and third party payers (including Medicare) for its services. In addition, the anesthesia service provider would begin paying the outpatient surgery/endoscopy center a per-patient fee for management services, e.g., adequate space for the anesthesia service provider's physicians' materials, such as documentation and records, as well as assistance with transferring billing documentation to the requestor's billing office. Federal healthcare program patients would be excluded from the management services fee.

Arrangement B – The outpatient surgery/endoscopy centers' physician owners would establish separate companies, or subsidiaries, that would furnish all anesthesia services to patients undergoing surgery at the outpatient surgery/endoscopy centers. The anesthesia service provider would be engaged as an independent contractor to exclusively provide anesthesia-related services to the subsidiaries at a negotiated rate.

In this advisory opinion, the OIG concluded that both proposed arrangements could potentially generate illegal remuneration to the physician owners that is not protected by safe harbors, would potentially violate the federal anti-kickback statute and could be subject to administrative sanctions.

The advisory opinion was provided to a specific anesthesia service provider and is limited in scope to the specific arrangement discussed in the letter. Ultimately, these sorts of arrangements must be evaluated on an individual basis based on all of the facts and circumstances, but the advisory opinion does provide some guidance as to the general analytic framework the OIG would apply to such arrangements.

ASGE recommends that you seek expert legal counsel if you have questions about your ASC's current arrangement for anesthesia services or if you intend to enter into a new arrangement for anesthesia services.