

# Paying for Quality: Increasing Shift Toward Value-Based Healthcare

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On November 30, 2011, the Office of the Inspector General (OIG) of the US Department of Health and Human Services issued an advisory opinion (No. 11-18) to the web-based physician practice service provider athenahealth, tacitly approving the company's new online service athenaCoordinator. The athenaCoordinator is a cloud-based physician referral tool that monetizes, in some instances, the "referral transaction" between a referring physician and a "trading partner."

Important for members of the oncology team, the OIG opinion offers precedent in the cost-value debate, particularly with regard to arrangements that may offer cost-saving, value-enhancing benefits that fall outside the bounds of what has traditionally been viewed as appropriate arrangements between referring health professionals.

Despite the acknowledgment by the OIG that the proposed arrangement could generate prohibited referrals under the federal Anti-Kickback Statute, the OIG stated it would not impose administrative sanctions in connection with the proposed arrangement. The OIG acknowledged the

"laudable goal" of the "efficient exchange of health information between health professionals" in determining that the proposed arrangement would be unlikely to influence an ordering physician's referral decisions.

The athenaCoordinator service offers current athenahealth subscribers the opportunity to transmit referrals through a cloud-based network, with options for insurance precertification

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and patient registration among physicians and hospitals, surgical centers, and imaging centers. To avoid obvious violations of the Anti-Kickback Statute and to offer a more robust network of trading partners (those who receive the referrals), there would be no cost for a health professional to be listed in the athenaCoordinator service.

As a result, a nonparticipating health professional may receive a referral



from an athenahealth subscriber, with no out-of-pocket cost. Instead, the transmission fee in this instance would be placed on the referring physician. However, should health professionals choose to become official trading partners with athenahealth, they would receive an enhanced profile on the cloud-based network. Although there would be no cost to health professionals to become a trading partner, trading partners would be charged for any services provided by athenahealth. Moreover, once a health professional becomes an official trading partner, the cost of the referral transmission is borne by the trading partner, not by the referring physician.

As acknowledged by the OIG, such an arrangement clearly implicates the Anti-Kickback Statute, because a referring physician has an incentive (however slight: the transmission fee is \$1) to choose paying trading part-

ners over health professionals who list for free in the network. In addition, although the possibility has not been addressed by the OIG, one must assume that the "customized" network profiles provided to paying trading partners may attract more referrals than health professionals who are receiving a free ride.

The OIG concluded that the facts and circumstances of the proposed arrangement would "adequately reduce" the risk that the remuneration provided through athenaCoordinator could be an improper payment for referrals, or for arranging for referrals of federal healthcare program business. The OIG's advisory opinion has received quite a bit of press among the legal community. Because this arrangement offers clear cost-value benefits, it is conjectured that the OIG approved of the arrangement in spite of a clear violation of the Anti-Kickback Statute.

This transition to a healthcare system in which cost and value are integral to the treatment decision is not a new phenomenon but an emerging trend. The Affordable Care Act brought us accountable care organizations and value-based purchasing, which are increasingly relied on by payers, both public and private, to ensure that each receives the most value for each healthcare dollar.

The oncology community is aware of this trend and should be prepared for a continued shift toward value, as this OIG opinion demonstrates. ■