

## Report on Medicare Compliance Volume 31, Number 21. June 13, 2022 Advisory Opinions May Head Off Potential Whistleblowers, Lawyer Says

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By Nina Youngstrom

Heading off potential whistleblowers is one reason to request an advisory opinion from the HHS Office of Inspector General (OIG), which is generally a “powerful” but “underused tool” for determining whether providers have something to worry about in their compensation and other arrangements, an attorney said. That was the thinking of a Louisiana physician practice that recently requested an advisory opinion about whether its method of allocating physician compensation runs afoul of the Anti-Kickback Statute (AKS).<sup>[1]</sup>

A former clinician at Cardiovascular Specialty Care Center of Covington LLC (CVSCC), which consists of invasive and interventional cardiologists, raised a compliance concern about the structure of physician compensation, said attorney Larry Vernaglia, with Foley & Lardner LLP, in Boston, who represents CVSCC. Anytime a compliance issue is raised internally, it should be reviewed, and “you should put their concern to rest,” he noted. One way to do that is to request an advisory opinion, he said. Assuming the provider receives a favorable opinion, it can be conveyed to the person who reported the complaint.

“The advisory opinion is an extremely useful tool for providers who find themselves substantially in compliance with the Anti-Kickback Statute, but not fitting squarely within a safe harbor (or the most-obvious safe harbor),” he said. “Providers who want to ensure their operations are compliant with the law should remember that OIG created the advisory opinion request process to provide a vehicle for giving meaningful advice to providers on applications of health care fraud and abuse laws to existing and proposed arrangements.”

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