1111 Bayou Road
La Marque, Texas
409-938-9202

Mayor Bobby Hocking
Mayor Pro- Tem Keith Bell- District A *Councilmember Robert Michetich- District C*
Councilmember Chris Lane- District B *Councilmember Casey Mc Auliffe- District D*

****

OFFICIALLY POSTED ON THE WEB:

DATE: **7.12.19** TIME: **12:05 p.m.**

CITY OF LA MARQUE
SPECIAL CALLED CITY COUNCIL
AGENDA
of
July 15, 2019

Notice is hereby given that the City Council of the City of La Marque, Texas will conduct a Special Called Meeting on **Monday, July 15, 2018, beginning at 6:00 p.m**. at 1109-B Bayou Road for the purpose of considering the following agenda**:**

(1) CALL MEETING TO ORDER

(2) ROLL CALL

(3) INVOCATION AND PLEDGE OF ALLEGIANCE

(4) NEW BUSINESS

a. City Manager to present the Proposed FY 2019-2020 Budget of the City of La Marque.

b. Discussion/possible action regarding the Community Development Block Grant-DR (CDBG-DR) applications and the projects tied to them - Provision Specialized Resources, LLC- Alice Ashley

c. Discussion/possible action regarding appointments and/or reappointments to fill various positions of the Boards and Commissions

d. Discussion/possible action regarding adopting Resolution No. **R-2019-0017**, amending Resolution R-2014-007 Exhibit "A" on current emergency medical services patient billing and collection policy

(5) ADJOURNMENT

CERTIFICATION:
I hereby certify that the above notice of meeting was posted at 1109-B Bayou Road, La Marque, Texas on or before July 12, 2019, before 5:30 p.m.

_____
Robin Eldridge, TRMC
City Clerk

This facility is wheelchair accessible and accessible parking spaces are available. Request for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Clerk's office at (409) 938-9259, or Fax (409) 935-0401, or e-mail cityclerk@cityoflamarque.org for further information.

CITY COUNCIL AGENDA FORM

Meeting Date: July 15, 2019 | Agenda item: **4c**

Prepared by: Robin Eldridge | Reviewed by: *Charlene Warren/ Charles Jackson*

Department: Mayor & City Council

AGENDA ITEM DESCRIPTION: Discussion/possible action regarding appointments and/or reappointments to fill various positions of the Boards and Commissions

X

ATTACHMENTS FOR REFERENCE

1. Boards and Commissions
2. Current applications on file
3. Current Ordinance

STAFF BRIEFING:

- There has been a change since the last time appointments and reappointments have been made
- Ordinance No. O-2018-0019 was adopted on January 14, 2019 which specifies procedures for appointments, terms, residential criteria and other
- Planning & Zoning Commission is at a critical membership number. There is one vacancy in the membership and two alternate position vacancies
- There are vacant positions available for appointment or reappointment on each of the Boards and Commissions
- There are **very few** applications on file
- Yellow highlights show those members whose terms have expired, or they are vacant positions, and green highlights show which members' terms will be expiring at the end of this year

HISTORY:

- Appointments and Reappointments to Boards and Commissions have historically been done by City Council

TARGET IMPLEMENTATION: As soon as possible, as to fill each Board or Commission with the number of members required to conduct City business

SIGNIFICANT ACTION DATES:

1.14.2019 - New Ordinance for appointing members to Boards and Commissions was adopted

CITY COUNCIL AGENDA FORM

ACTION:

☐	Ordinance	☐	Resolution
☐	Special Presentation	☐	Proclamation
☐	Finance Report	☐	Public Hearing
☒	Other - appointments/or reappointments to Boards & Commissions		
☒	Mark if this item does not conflict with any Resolution, Ordinance or City Charter, policies, procedures		

Cost Details:	
Budgeted	N/A
Actual Bid	N/A
Estimated Expenditure	N/A
Acct. Name(s)	N/A
Line Item #	N/A
Other Funding	N/A

STAFF'S RECOMMENDATION: Motion to approve appointments and/or reappointments to fill various positions of the Boards and Commissions

FISCAL IMPACT: N/A (Boards and Commission members serve without pay)

BOARD OF ADJUSTMENT

BOARD OF ADJUSTMENT- ORD. 953		**Appointed**	**Expires**	**Appoints**
1. Lillian Petty	#11 N. Skimmer	18	19	D
2. David Pennington-Exp.	924 Cypress	18	19	C
3. Herman Harper	102 Union	17	19	A
4. Harold Augustus	1030 Laurel	18	20	M
5. Lois M. Jones	2602 Meadow Lane	19	21	B
ALTERNATES				
1. Helen Kee	3103 Mc Arthur	16	18	D
2. VACANT		18	20	C
Ex-officio- Open				

The Board shall consist of five (5) members who are residents of the City, each to be appointed by the City Council for a term of two years and removable for cause by the appointing authority upon written charges and after public hearing.

The City Council may appoint two (2) alternate members of the Board who shall serve in the absence of one (1) or more of the regular members.

These alternate members, when appointed, shall serve for the same period as the regular members, which are for a term of two (2) years, and any vacancy shall be filled in the same manner, and they shall be subject to removal the same as the regular members.

Each position on the Board shall be given a numerical designation with the designations beginning with the number 1 and ending with the number 5.

The terms of the odd-numbered positions (1, 3 & 5) will expire in odd-numbered years and the terms of even-numbered years (2 & 4) shall expire in even-numbered years. Board members may be appointed to successive terms.

CEMETERY BOARD

CEMETERY BOARD – ORD. 1033		**Appointed**	**Expires**	**Appoints**
1. Ellen Hanley	1019 Plum	18	20	A
2. Rosalind Meeks Crockett	1302 Merry Lane	18	20	C
3. Kurt Koopman	1004 Lilac	18	20	B
4. Bim Crowder (CHAIR)	401 Texas Avenue	19	21	D
5. VACANT- EXPIRED		17	19	M
Ex-officio- OPEN				

The Cemetery Board for the City of La Marque, Texas shall consist of five (5) members to be appointed by City Council; and one ex-officio member of City Council.

Board members shall serve for two (2) year terms.

CIVIL SERVICE COMMISSION

CIVIL SERVICE COMMISSION Local Govmt. Code & ORD. 821		**Appointed**	**Expires**	**Appoints**
1. Lucy Glenn	824 Laurel	18	19	CM
2. Morris Martin, Jr.	725 Lilac	18	20	CM
3. VACANT	Unexpired term	18	21	CM
Patty Rees				

The Civil Service Commission shall consist of three (3) members appointed by the City Manager.

Each January, the Commission must appoint a Chair and Vice Chair.

Chapter 143.006 and 007 - Local Government Code –Terms of Office

The terms of office shall be for three (3) year terms, with no more than one member appointed each year, with the exception of the initial appointments. The initial appointments to the Civil Service Commission shall serve as follows:

a. One member to serve a one (1) year term
b. One member to serve a two (2) year term
c. One member to serve a three (3) year term

Position 1 - 1 year term
Position 2 - 2 year term
Position 3 - 3 year term

ECONOMIC DEVELOPMENT CORPORATION

ECONOMIC DEVELOPMENT CORPORATION — 695 APPOINTED BY CITY COUNCIL		Appointed	Expires	Appoints
1 Ron Crowder	4 Chimney Corners	14	20	C
2 Gene Smith	2110 Evergreen	18	24	M
3 Deanie Barrett	2603 Cedar Drive	16	22	A
4 Bobby Hocking	614 Sunset Lane	13	19	B
5 Louis McGaffey	2314 Downey	14	20	D

The Board of Directors shall consist of five (5) directors each of whom shall be appointed by the Governing Body.

Appointments are for six (6) year terms.

KEEP LA MARQUE BEAUTIFUL COMMISSION

KLMBC- ORDINANCE # O-2017-0021		**Appointed**	**Expires**	**Appoints**
1. Kimberly Yancy	2602 Meadow Lane	19	21	B
2. Alanah Brown	716 Amato St.	19	21	D
3. Joe A. Compian	1020 Duroux	17	19	A
4. Terry Pettijohn	41 Borondo Pines	18	20	M
5. Kathy Herrin	56 Borondo Pines	19	21	B
6. David Holmen	605 Sable Terrace Ln.	16	18	M
7. Vivian Allen	816 Howell Ave.	17	19	C
Ex-officio- District D				

All seven (7) Commissioners appointed by the City Council serve two (2) year staggered terms, except that appointment to vacancies shall be for the unexpired term of the position to which the appointment is made.

PLANNING & ZONING COMMISSION

PLANNING & ZONING ORD. # 2014-0023		**Appointed**	**Expires**	**Appoints**
1 Augustino Molis	741 Spoonbill	18	20	A
2 Alan Waters	#1 Pin Tail	19	21	B
3 Greg Cornett	1310 Cedar	19	21	C
4 Hugh Cash	217 Sarlee	18	20	M
5 Douglas Hobgood	406 Edgar	19	21	D
ALTERNATES				
#1 VACANT	UNEXPIRED TERM	18	20	A
#2 Chris Columbo (U)	1206 Veronica	19	20	B
Ex-officio- District C				

The City Council shall appoint a Planning and Zoning Commission which shall consist of five (5) members, each member being a resident and a real property taxpayer of the City of La Marque, and none of whom shall hold any other position in the City Government.

Three members of the **first** Commission shall be appointed for a term of two years and two for a term of one year. Thereafter, new members shall be appointed for a term of two years. Ordinance No. O-2014-0023, allows for City Council to appoint two (2) alternates to the Planning & Zoning Board.

*__Alternates__ are required to attend and review packets as the regular Commission members. In the case that an alternate is present to make a quorum, in the absence of a member, they will be allowed to vote. If all members are present, alternates votes will not be allowed to vote.

U- unexpired term

CANDIDATE APPLICATION FORM
FOR COUNCIL-APPOINTED BOARDS & COMMISSIONS
OF
THE CITY OF LA MARQUE

RECEIVED
JUL 10 P.M.
BY: LL

City Council will review applicants interested in serving on a City Board and/or City Commission. Information disclosed on this application or any other attached documents may be disclosed in public meetings.

Please type or print information

Board Preference 1: Civil Service Commission

Board Preference 2: _____

Name: Samuel Swain

Home Address: 1209 Foreman st.

City: La Marque Zip: 77568 La Marque Resident: 5 yrs

Home Telephone: 409-238-4155 Home E-mail: Swainfam@live.com

Profession: Txdot Engineer

Special Knowledge or Experience applicable to City Board/Commission function:
Military and Supervisor Positioning

Other Information (Civic Activities):
Volunteer Police / Graduate of LMCPA

I verify that the information I have provided on this application to be true and correct. I also acknowledge that this information may be made available to the public.

Signature: _____ Date: 7-10-19

PLEASE RETURN COMPLETED APPLICATION TO THE CITY CLERK'S OFFICE, 1111 BAYOU RD, LA MARQUE, TEXAS 77568. APPLICATIONS WILL REMAIN ON FILE FOR TWO YEARS.

CANDIDATE APPLICATION FORM
FOR COUNCIL-APPOINTED BOARDS & COMMISSIONS
OF
THE CITY OF LA MARQUE

RECEIVED
AUG 27 A.M.
BY:

City Council will review applicants interested in serving on a City Board and/or City Commission. Information disclosed on this application or any other attached documents may be disclosed in public meetings.

Please type or print information

Board Preference 1: Board of Adjustments

Board Preference 2: Planning and Zoning

Name: Stephanie Gordon

Home Address: 105 Lake Road

City: La Marque Zip: 77568 La Marque Resident: 30+ yrs

Home Telephone: 4094436711 Home E-mail: gordons76s@gmail.co

Profession: Realtor

Special Knowledge or Experience applicable to City Board/Commission function:
Resident for over 30 years in TC/LM
Graduate of LMISD (1989) Real Estate Professional
AISD former employee of LMISD 2009-2015

Other Information (Civic Activities):
Galveston County Democrats/Former Precint 331 Chair

I verify that the information I have provided on this application to be true and correct. I also acknowledge that this information may be made available to the public.

Signature: Stephanie Gordon Date: Aug 27, 2018

PLEASE RETURN COMPLETED APPLICATION TO THE CITY CLERK'S OFFICE, 1111 BAYOU RD, LA MARQUE, TEXAS 77568. APPLICATIONS WILL REMAIN ON FILE FOR TWO YEARS.

CANDIDATE APPLICATION FORM
FOR COUNCIL-APPOINTED BOARDS & COMMISSIONS
OF
THE CITY OF LA MARQUE

MAR 09 A.M
2017

City Council will review applicants interested in serving on a City Board and/or City Commission. Information disclosed on this application or any other attached documents may be disclosed in public meetings.

Please type or print information

Board Preference 1: Clean City Commission

Board Preference 2: _____

Name: JOHNNIE MOSES

Home Address: 1405 J BROOK

City: LA MARQUE Zip: 77568 La Marque Resident: 12 yrs

Home Telephone: 409 935 4373 Home E-mail: JMOSES1010@SBCGLOBAL.NET

Profession: RETIRED CHRONIC CONDITION EDUCATOR - TREASURER

Special Knowledge or Experience applicable to City Board/Commission function:
RETIRED, VETERAN, LONG TIME RESIDENT LA MARQUE

Other Information (Civic Activities):
VARIOUS

I verify that the information I have provided on this application to be true and correct. I also acknowledge that this information may be made available to the public.

Signature: Johnnie J Moses Date: 3-8-17

PLEASE RETURN COMPLETED APPLICATION TO THE CITY CLERK'S OFFICE, 1111 BAYOU RD, LA MARQUE, TEXAS 77568. APPLICATIONS WILL REMAIN ON FILE FOR TWO YEARS.

CANDIDATE APPLICATION FORM
FOR COUNCIL-APPOINTED BOARDS & COMMISSIONS
OF
THE CITY OF LA MARQUE

2017

APR 05 A.M.

City Council will review applicants interested in serving on a City Board and/or City Commission. Information disclosed on this application or any other attached documents may be disclosed in public meetings.

Please type or print information

Board Preference 1: Economic Development

Board Preference 2: Clean City

Name: Jennifer Faircloth Earl

Home Address: 1412 Bonham

City: La Marque Zip: 77568 La Marque Resident: 15 yrs

Home Telephone: 409-539-0304 Home E-mail: kyleearl@sbcglobal.net

Profession: Production Manager at Minuteman Press-Bay Area

Special Knowledge or Experience applicable to City Board/Commission function: I have experience of assisting in the running of a business as well as a longtime resident.

Other Information (Civic Activities):
N/A

I verify that the information I have provided on this application to be true and correct. I also acknowledge that this information may be made available to the public.

Signature: Jennifer Faircloth Earl Date: 4-3-17

PLEASE RETURN COMPLETED APPLICATION TO THE CITY CLERK'S OFFICE, 1111 BAYOU RD, LA MARQUE, TEXAS 77568. APPLICATIONS WILL REMAIN ON FILE FOR TWO YEARS.

CANDIDATE APPLICATION FORM
FOR COUNCIL-APPOINTED BOARDS & COMMISSIONS
OF
THE CITY OF LA MARQUE

RECEIVED
JUN 22 A.M.
BY pe

City Council will review applicants interested in serving on a City Board and/or City Commission. Information disclosed on this application or any other attached documents may be disclosed in public meetings.

Please type or print information

Board Preference 1: Board of Adjustments

Board Preference 2: _____

Name: Charlotte A. Westbrook

Home Address: 825 Shady Lane

City: La Marque Zip: 77568 La Marque Resident: ~ yrs

Home Telephone: 409-935-5167 Home E-mail: _____

Profession: Retired

Special Knowledge or Experience applicable to City Board/Commission function: _____
Longtime Texas Homeowner on Board; Zoning Committee

Other Information (Civic Activities):

_____

I verify that the information I have provided on this application to be true and correct. I also acknowledge that this information may be made available to the public.

Signature: Charlotte A Westbrook Date: 6-22-2018

PLEASE RETURN COMPLETED APPLICATION TO THE CITY CLERK'S OFFICE, 1111 BAYOU RD, LA MARQUE, TEXAS 77568. APPLICATIONS WILL REMAIN ON FILE FOR TWO YEARS.

CANDIDATE APPLICATION FORM
FOR COUNCIL-APPOINTED BOARDS & COMMISSIONS
OF
THE CITY OF LA MARQUE

RECEIVED
JUN 07 A.M.
BY:

City Council will review applicants interested in serving on a City Board and/or City Commission. Information disclosed on this application or any other attached documents may be disclosed in public meetings.

Please type or print information

Board Preference 1: Civil Service Commisioner

Board Preference 2: _____

Name: Lucy Glenn

Home Address: 824 Laurel

City: La Marque Zip: 77568 La Marque Resident: 16 yrs

Home Telephone: 409-457-9942 Home E-mail: luceknee@comcast.net

Profession: Physical Therapist

Special Knowledge or Experience applicable to City Board/Commission function: Member 2018, attended civil service conference 2018, interest in relationships between community and police, civic duty

Other Information (Civic Activities):
Board member for the Galveston Humane Society 2000-2004

I verify that the information I have provided on this application to be true and correct. I also acknowledge that this information may be made available to the public.

Signature: _____ Date: 7/3/19

PLEASE RETURN COMPLETED APPLICATION TO THE CITY CLERK'S OFFICE, 1111 BAYOU RD, LA MARQUE, TEXAS 77568. APPLICATIONS WILL REMAIN ON FILE FOR TWO YEARS.

CANDIDATE APPLICATION FORM
FOR COUNCIL-APPOINTED BOARDS & COMMISSIONS
OF
THE CITY OF LA MARQUE

City Council will review applicants interested in serving on a City Board and/or City Commission. Information disclosed on this application or any other attached documents may be disclosed in public meetings.

RECEIVED
JUL 11 P.M.
BY:

Please type or print information

Board Preference 1: PARK BOARD

Board Preference 2: KEEP LA MARQUE BEAUTIFUL COMMISSION

Name: TONIA R GRIFFIN

Home Address: 2619 BELLVIEW STREET

City: LA MARQUE Zip: 77568 La Marque Resident: _____ yrs

Home Telephone: 4094526647 Home E-mail: trenegriffin01@gmail.com

Profession: CEO/FOUNDER

Special Knowledge or Experience applicable to City Board/Commission function: _____

Other Information (Civic Activities): KHAMBREL FOUNDATION RIGHTEOUS ACTS OF KINDNESS

I verify that the information I have provided on this application to be true and correct. I also acknowledge that this information may be made available to the public.

Signature: _____ Date: 07/11/19

PLEASE RETURN COMPLETED APPLICATION TO THE CITY CLERK'S OFFICE, 1111 BAYOU RD, LA MARQUE, TEXAS 77568. APPLICATIONS WILL REMAIN ON FILE FOR TWO YEARS.

RECEIVED
7/11/19 EAB

CITY COUNCIL AGENDA FORM

Meeting Date: July 15, 2019
Agenda item: **4d**
Prepared by: Suzy Kou and Todd Weidman
Reviewed by: *Charlene Warren/ Charles Jackson*
Department: Finance

AGENDA ITEM DESCRIPTION: Discussion/possible action regarding adoption of Resolution No. **R-2019-0017**, amending Resolution R-2014-007 Exhibit "A" on current emergency medical services patient billing and collection policy

[X]

ATTACHEMENTS FOR REFERENCE

1. Amended Resolution R-2019-0017
2. Resolution R-2014-007
3. Former Fire Chief's memo

STAFF BRIEFING:

- Per Resolution R-2014-007 for In-District residents' delinquent accounts, City authorizes billing contractor **not** to report to credit reporting agencies **or** pursue any litigation; for Out-of-District patients' delinquent accounts, billing contractor **may** report to credit reporting agencies **but shall not** pursue litigation.
- Per Intermedix records, uncollectible delinquent balances from prior years due to this policy has been:
    - 2014 $100,068.36
    - 2015 $480,051.76
    - 2016 $273,444.96
    - 2017 $371,785.45
    - 2018 $509,878.18
    - 2019 $137,244.03 (Partial year)
    - Total **$1,872,472.74**

HISTORY:

August 2005 – City of La Marque joined coalition of cities to provide EMS services.
January 2006 – La Marque chose to establish a "Fire Department" based EMS service.
February 14, 2006 – Former Fire Chief issued a waiver policy directive to Intermedix.
December 9, 2011 – City Attorney issued a memo recommending to charge and collect co-payments for EMS services.
January 24, 2014 – Former Fire Chief Gerald Grimm issued a memo on his analysis and recommendation.
January 27, 2014 – Council workshop to discuss unpaid ambulance billing fees.
March 10, 2014- City Council passed a resolution to implement a new collection policy.

CITY COUNCIL AGENDA FORM

TARGET IMPLEMENTATION: August 1, 2019

SIGNIFICANT ACTION DATES:
January 27, 2014 - Council workshop to discuss unpaid ambulance billing fees
March 10, 2014 - Council approved Resolution R-2014-007

ACTION:

☐	Ordinance	☒	Resolution
☐	Special Presentation	☐	Proclamation
☐	Finance Report	☐	Public Hearing
☐	Other		

☒ Mark if this item does not conflict with any Resolution, Ordinance or City Charter, policies, procedures

Cost Details:	
Budgeted	$400,000
Actual Bid	
Estimated Revenues	**$775,500**
Acct. Name(s)	Ambulance Fees
Line Item #	01-3530-00-00
Other Funding	

STAFF'S RECOMMENDATION: Motion to adopt Resolution No. **R-2019-0017**, amending Resolution R-2014-007 Exhibit "A" on current emergency medical services patient billing and collection policy

FISCAL IMPACT: Conservatively assume collection of 20% of delinquent balance ($375,000). Any additional revenue would always be great for the City to relieve the burden on taxpayers.

RESOLUTION NO. R-2019-0017

A RESOLUTION AMENDING RESOLUTION NO. R-2014-007 EXHIBIT A REGARDING EMERGENCY MEDICAL SERVICES PATIENT BILLING AND COLLECTION POLICY.

WHEREAS, the City of La Marque Fire Department commenced providing Emergency Medical Services in January, 2006; and

WHEREAS, the City of La Marque contracted with Intermedix Corporation for EMS patient billing services upon commencement of service; and

WHEREAS, the City of La Marque issued a policy directive to Intermedix Corporation on February 14, 2006, directing them to bill "In-District Resident Patients" only to the extent of insurance coverage; and

WHEREAS, the City of La Marque conducted a fiscal impact study of the existing EMS patient billing practice and feasibility study for its continuation; and

WHEREAS, the City of La Marque Council approved Resolution R-2014-007 in March, 2014 to establish a new emergency medical services billing policy; and

WHEREAS, the City of La Marque desires to amend the existing 2014 policy regarding collection on delinquent account balances;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LA MARQUE, TEXAS:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Proceedings. That the amended Emergency Medical Services policy attached hereto as Exhibit "A" is hereby adopted as the EMS patient billing and collection policy of the City of La Marque, effective upon passage and execution.

Section 3. Open Meetings. It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public as required and that

public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex Gov't Code.*

Section 4. Effective Date. This resolution shall take effect upon its adoption.

PASSED AND APPROVED this the ____ day of July, 2019.

CITY OF LA MARQUE, TEXAS

_____
Bobby Hocking, Mayor
City of La Marque

ATTEST:

_____
Robin Eldridge, TRMC, City Clerk

APPROVED AS TO FORM:

_____
Ellis J. Ortego, City Attorney

EXHIBIT "A"

EMERGENCY MEDICAL SERVICES PATIENT BILLING AND COLLECTION POLICY

Patients receiving emergency medical services provided by the City of La Marque shall be billed in accordance with best practice billing and re-billing process which call for billing/re-billing three (3) times at regular thirty (30) day "cycle billing" intervals. Periodic reviews will be conducted to determine if collection action is appropriate.

When direct contact with the patient becomes necessary, the billing process shall engage in **"customary"** industry best practices patient contact billing utilizing Auto-Dialer Technology and Predictive Dialer Technology.

Aged patient receivables may be submitted for best practices collection with scheduled reviews to determine if collection activity should continue or cease. Per Resolution R-2019-00, the City reserves the right to report to credit reporting agencies and pursue collection efforts on all delinquent accounts deemed necessary.

RESOLUTION NO. R-2014-007

A RESOLUTION AUTHORIZING RESCISSION OF EXISTING EMERGENCY MEDICAL SERVICES PATIENT BILLING WAIVER POLICY FOR UNPAID BALANCES NOT COVERED BY INSURANCE FOR "IN-DISTRICT RESIDENT PATIENTS"; AND AUTHORIZING IMPLEMENTATION OF A REVISED EMERGENCY MEDICAL SERVICES PATIENT BILLING POLICY FOR "IN-DISTRICT RESIDENT PATIENTS" AND "OUT-OF-DISTRICT PATIENTS".

WHEREAS, the City of La Marque Fire Department commenced providing Emergency Medical Services in January, 2006; and

WHEREAS, the City of La Marque contracted with Intermedix Corporation for EMS patient billing services upon commencement of service; and

WHEREAS, the City of La Marque issued a policy directive to Intermedix Corporation on February 14, 2006, directing them to bill "In-District Resident Patients" only to the extent of insurance coverage; and

WHEREAS, the City of La Marque conducted a fiscal impact study of the existing EMS patient billing practice and feasibility study for its continuation; and,

WHEREAS, the City of La Marque desires to rescind the existing waiver policy of unpaid balances not covered by insurance for "In-District Resident patients" and establish new emergency medical services patient billing polices in lieu thereof.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LA MARQUE, TEXAS:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Rescission. That the policy directive to Intermedix Corporation o February 14, 2006, directing them to bill "In-District Resident Patients" only to the extent of insurance coverage is hereby rescinded.

Section 3. Proceedings. That the Emergency Medical Services patient billing policy for "In-District Resident Patients" and "Out-of-District Patients" attached hereto as Exhibit "A" is hereby adopted as the EMS patient billing policy of the City of La Marque, effective upon passage and execution.

Section 4. Open Meetings. It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public as required and that

public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex Gov't Code.*

Section 5. Effective Date. This resolution shall take effect upon its adoption.

PASSED AND APPROVED this the 10th day of March, 2014.

THE CITY OF LA MARQUE, TEXAS

Bobby Hocking, Mayor
City of La Marque

APPROVED AS TO FORM:

Ellis J. Ortego, City Attorney

ATTEST:

Robin Eldridge, City Clerk

EXHIBIT "A"

EMERGENCY MEDICAL SERVICES PATIENT BILLING POLICY

IN-DISTRICT RESIDENT PATIENT ACCOUNTS

"In-District Resident" patients receiving emergency medical services provided by the City of La Marque shall be billed in accordance with the standard, best practices billing and re-billing process which calls for billing/re-billing three (3) times at regular thirty (30) day "cycle billing" intervals, with scheduled reviews to determine if collection action is indicated.

When direct contact with the patient becomes necessary, the billing contractor shall engage in **"soft"** industry best practices patient contact billing utilizing Auto-Dialer Technology and Predictive Dialer Technology.

Aged patient receivables shall be submitted for best practices collection by a contractor selected by the City for a period not to exceed one hundred and eighty (180) days with scheduled reviews to determine if collection activity should continue or cease. In-District Resident delinquent patient accounts **(shall not)** be reported to any of the "credit reporting agencies" or subjected to litigation.

OUT-OF-DISTRICT PATIENT ACCOUNTS

"Out-of-District" patients receiving emergency medical services provided by the City of La Marque shall be billed in accordance with the standard, best practices billing and re-billing process which calls for billing/re-billing three (3) times at regular thirty (30) day "cycle billing" intervals, with scheduled reviews to determine if collection action is indicated.

When direct contact with the patient becomes necessary, the billing contractor shall engage in **"customary"** industry best practices patient contact billing utilizing Auto-Dialer Technology, Predictive Dialer Technology and other available technology/processes at the billing contract's discretion.

Aged patient receivables shall be submitted for best practices collection by a contractor selected by the City for a period not to exceed one hundred and eighty (180) days with scheduled reviews to determine if collection activity should continue or cease. Out-of-District delinquent patient accounts **(may be)** reported to any of the "credit reporting agencies", but shall not be subjected to litigation.

INTEROFFICE MEMORANDUM

LA MARQUE FIRE DEPARTMENT

TO: Carol Buttler, City Manager

FROM: Gerald Grimm, Fire Chief

DATE: January 24, 2014

SUBJECT: Analysis and Background of Existing EMS Fees {In-District Resident Waiver} Policy

I have provided the historical information available and relevant facts and supporting literature surrounding the referenced policy for your perusal and consideration along with my analysis of same.

We have also sought and received financial projections from Intermedix illustrating the potential financial loss impacted by this policy. Additionally, I have conducted a "snapshot sampling" of other jurisdictions in the area to determine the extent of similar policies which I have enclosed for review.

BACKGROUND

The City of La Marque entered into a coalition of cities on the mainland led by the Texas City Fire Department along with county government in August of 2005 to address the imminent crisis created by the abrupt and unanticipated discontinuation of EMS service by Gold Star EMS and, to explore alternative options which would afford greater continuity of quality service without the ongoing threat of recurring interruption or total stoppage as was the case with Gold Star EMS and previous providers.

La Marque chose to establish a "Fire Department" based EMS service as did Texas City and Dickinson. Galveston County in conjunction with the Galveston County Health District chose to expand Galveston EMS (GEMS) to provide EMS service to the remaining participants on the mainland and in the unincorporated areas under separate agreement. Galveston EMS provided service to La Marque in the intervening period until La Marque Fire Department went **{live}** with licensed EMS service in January, 2006.

On February 14, 2006, Fire Chief Todd Zacherl, ostensibly acting on behalf of the City Manager and City Council issued a policy directive to Intermedix which reads in part:

"…La Marque is writing this letter to inform Intermedix to bill bona fide residents of our city only to the extent of their {insurance coverage}…The City plans to treat revenue received from various local taxes and/or utility assessments as payment of otherwise applicable copayments and deductibles due from residents…The city is providing this benefits to its residents as per CMS carrier manual section 2309.4…"

On December 9, 2011, City Attorney, Ellis Ortego issued an {advisory} memorandum to City Manager Buttler following production of what was obviously limited and incomplete documentation apparently assembled by the fire department which calls into question the practice of waiving copayments and deductibles for federally funded Medicare and Medicaid benefits, and commercial insurance coverage for allowable reimbursement for charges by entities of state or

local government for (emergency medical services and patient transport fees). ***A copy of the memorandum is attached.*** The memorandum reads in part:

"After analyzing the research materials provided to you by Susan A. Best, it appears that it is unlawful and possibly a crime to submit a claim to a public or private health care program for providing a medical benefit or service…after waiving copayments"

"My recommendation is to charge and collect co-payments for EMS services…"

ANALYSIS AND CONCLUSIONS

This is a prolific and, at times, a volatile issue for local government entities providing Emergency Medical Services to its citizenry and, has been for over a decade with the ever growing advent of "government based" EMS service rather than relying on "private sector EMS providers" where there is no doubt that waiving "unpaid balances" is prohibited in the private sector. However, many cities and counties across the nation have policies similar to ours, but those that do and make it work within the parameters established by federal law {federal anti-kickback statute} and attendant CMS regulations have formally adopted such policies vis-à-vis legislative action by the elected body and, have sought and received a **{specific}** OIG advisory opinion allowing said waiver from the Office of Inspector General for their jurisdiction.

It is clear in reading the numerous OIG advisory opinions *(representative sample attached)* issued on this subject and numerous law bulletins *(representative sample attached)* all of which include cautionary language stating that as with all OIG advisory opinions, the OIG cautions that the opinion has no application to, and cannot be relied upon by, any other entity of government. Therefore, it is clear La Marque erred by not pursuing legal exemption from the prohibition; therefore, our policy contravenes federal law and regulations.

Entities seeking exception from the regulations can rely upon and base their request for exemption on the clear reading of the Centers for Medicare and Medicaid Services Carrier Manual, Section 2309.4 which reads in part, but must do so formally: **"A {state or local government} facility which reduces or waives its charges for patients unable to pay, or charges patients only to the extent of their Medicare and other health insurance coverage, is not viewed as furnishing free services and may therefore receive program payment."** *A copy of Health Law Update May 2003 is attached.*

I have provided an excerpt from a FACT SHEET, dated November 1999, issued by the Office of Inspector General, Office of Public Affairs which further clarifies the basis for exemptions **{if sought}** pursuant to the "Safe Harbor" provisions which provide and encompass EMS waiver exemptions if solicited and received. *A copy of the fact sheet is attached.* It reads in part:

"On the books since 1972, the federal anti-kickback law's main purpose is to protect patients and the federal health care programs from fraud and abuse by curtailing the corrupting influence of money on health care decisions. Straightforward but broad, the law states that anyone who knowingly and willfully receives or pays anything of value to influence the referral of federal health care program business, including Medicare and Medicaid, can be held accountable for a felony. Violations of the

law are punishable by up to five years in prison, criminal fines up to $25,000, administrative civil money penalties up to $50,000, and exclusion from participation in federal health care programs.

Because the law is broad on its face, concerns arose among health care providers that some relatively innocuous – and in some cases even beneficial – commercial arrangements are prohibited by the anti-kickback law. Responding to these concerns, Congress in 1987 authorized the Department to issue regulations designating specific "safe harbors" for various payment and business practices that, while potentially prohibited by the law, would not be prosecuted"

ESTIMATED FISCAL IMPACT

Considering the many variables that come into play, such as Medicare vs. Commercial vs. Self-Pay, etc., coupled with our past performance, demographics, and payor mixes, Intermedix estimates an additional return of 8 – 10% of our net billable charges with the elimination of the CMS exception which translates to approximately $35,000.00 - $50,000.00 range annualized.

It must be noted that the potential for {exponential} returns above and beyond those estimated by Intermedix which are based solely on the rescission of the "waiver policy" could be achieved with a **"soft collection"** policy for unpaid patient balances owing. Although impossible to extrapolate without historical financial experience upon which to base future estimates, it is clear that approximately $1,000,000.00 annually which represents the difference between the "net billable charges" and "net collections" remains uncollected.

I have attempted to capture a balanced factual history of this issue as I know it, and to flesh out the relevant facts that are available for review and analysis to afford a clearer landscape of the many considerations and options available to you and City Council going forward during your review. Although I harbor my own opinions on this matter, I have avoided articulating them in that the "appropriateness" of this public policy, and all others effecting the citizenry of La Marque remains entirely within the purview of our elected officials.

I welcome the opportunity to discuss this issue with you in greater detail at your convenience should you desire. As always, I appreciate your continued support and the leadership you provide.

IN-DISTRICT RESIDENT WAIVER OF EMS FEES SURVEY

Pearland EMS

City EMS Service **Unofficial Waiver Policy – No Collection Actions Taken**

Santa Fe

City EMS Service **Formally Adopted Waiver Policy**

Dickinson

City EMS Service **No Waiver Policy**

Texas City

City EMS Service **No Waiver Policy**

Webster

Contracted EMS Service – Contractor Subsidized by City for Unpaid Balances and Co-Payments

Victoria

City EMS Service **No Waiver Policy**

Alvin

City EMS Service **Informal Waiver Policy – Unpaid Balances Covered by EMS Donations on Water Bills**

City of **LaMarqueTx**

Set your sites on La Marque.

February 14, 2006

Intermedix, Inc.
16225 Park Ten Place Drive, Suite 805
Houston, Texas 77084

Dear Intermedix::

The City of La Marque is writing this letter to inform Intermedix to bill bona fide residents of our city only to the extent of their insurance coverage. The city plans to treat revenue received from various local taxes and/or utility assessments as payment of otherwise applicable co-payments and deductibles due from residents. The city is providing this benefit to its residents as per CMS carrier manual section 2309.4 and multiple advisory opinions published by the Office of the Inspector General (http://oig.hhs.gov/fraud/advisoryopinions).

We are instructing Intermedix to treat our city (in district) residents in this manner unless we notify Intermedix otherwise.

Sincerely,

Todd Zacherl,
Fire Chief

City of LaMarqueTx

Set your sites on La Marque.

MEMO

TO: CAROL BUTTLER
CITY MANAGER

FROM: ELLIS ORTEGO
CITY ATTORNEY

DATE: DECEMBER 9, 2011

RE: WAIVER OF COPAYMENTS FOR EMS SERVICE

After analyzing the research materials provided to you by Susan A. Best, it appears that it is unlawful and possibly a crime to submit a claim to a public or private health care program for providing a medical benefit or service (in our situation ambulance service) after waiving copayments. The example given is: Assume a $100 total charge where the patient has an 80/20 plan. "If the provider waives the patient's obligation to pay 20%, then, arguably the commercial plan owes only 80% of $80.00." Submission of a claim for $80.00 could be considered fraudulent.

My recommendation is to charge and collect co-payments for EMS services provided by the City.

I hope you find this to be useful.

Ao;12/9/11;Z:\Cities\La Marque\mcmoemscopay.doc

[*We redact certain identifying information and certain potentially privileged, confidential, or proprietary information associated with the individual or entity, unless otherwise approved by the requestor.*]

Issued: August 29, 2011

Posted: September 6, 2011

[Names and address redacted]

Re: OIG Advisory Opinion No. 11-13

Ladies and Gentlemen:

We are writing in response to your request for an advisory opinion regarding a proposal for a county which provides emergency medical services ("EMS") transportation through its fire department, to treat revenue received from taxes as payment of otherwise applicable cost-sharing amounts owed by bona fide county residents for EMS transportation to hospitals (the "Proposed Arrangement"). Specifically, you have inquired whether the Proposed Arrangement would constitute grounds for the imposition of sanctions under the civil monetary penalty provision prohibiting inducements to beneficiaries, section 1128A(a)(5) of the Social Security Act (the "Act"), or under the exclusion authority at section 1128(b)(7) of the Act, or the civil monetary penalty provision at section 1128A(a)(7) of the Act, as those sections relate to the commission of acts described in section 1128B(b) of the Act, the Federal anti-kickback statute.

You have certified that all of the information provided in your request, including all supplementary letters, is true and correct and constitutes a complete description of the relevant facts and agreements among the parties.

In issuing this opinion, we have relied solely on the facts and information presented to us. We have not undertaken an independent investigation of such information. This opinion is limited to the facts presented. If material facts have not been disclosed or have been misrepresented, this opinion is without force and effect.

Based on the facts certified in your request for an advisory opinion and supplemental submissions, we conclude that the Proposed Arrangement would not generate prohibited remuneration under the anti-kickback statute. Accordingly, the Office of Inspector General ("OIG") would not impose administrative sanctions on [name redacted] under sections 1128(b)(7) or 1128A(a)(7) of the Act (as those sections relate to the commission of acts described in section 1128B(b) of the Act) in connection with the Proposed Arrangement. In addition, the OIG would not impose administrative sanctions on [name redacted] under section 1128A(a)(5) of the Act in connection with the Proposed Arrangement. This opinion is limited to the Proposed Arrangement and, therefore, we express no opinion about any ancillary agreements or arrangements disclosed or referenced in your request letter or supplemental submissions.

This opinion may not be relied on by any persons other than [name redacted], the requestor of this opinion, and is further qualified as set out in Part IV below and in 42 C.F.R. Part 1008.

I. FACTUAL BACKGROUND

[Name redacted] (the "County") is a legal subdivision of [state name redacted] that provides EMS transportation through its fire department (the "Department"). Under the County code, the Department is responsible for management and oversight of the provision of pre-hospital emergency patient care and services as well as any additional services related to fire safety and EMS transportation. The Department is comprised of the employees of the County Fire and EMS transportation operations and various volunteer fire companies and volunteer rescue squads.[1] No private EMS transportation is offered in the County.

Currently, the County funds EMS transportation within its service area by means of taxes and per-service ambulance transport fees. These fees are established by municipal ordinance and are billed to patients and their insurers, including Federal health care programs such as Medicare and Medicaid. The County bills all patients and their insurers the full amount of the fees for EMS transportation, including any applicable cost-sharing amounts such as co-payments and deductibles.

Under the Proposed Arrangement, the County would not bill bona fide County residents who receive EMS transportation to hospitals for cost-sharing amounts for which they otherwise would be responsible. The County would accept payment from bona fide County residents' insurers, including Federal health care programs, as payment in full for the EMS transportation to hospitals (i.e., "insurance only billing"), and would treat revenues received from local taxes as payment of the cost-sharing amounts. The County

[1] The County's Code of Ordinances §§ 61-50, 61-51 & 61-52.

would continue to bill non-resident patients for any cost-sharing amounts due in connection with their EMS transportation.

II. LEGAL ANALYSIS

A. Law

The anti-kickback statute makes it a criminal offense knowingly and willfully to offer, pay, solicit, or receive any remuneration to induce or reward referrals of items or services reimbursable by a Federal health care program. See section 1128B(b) of the Act. Where remuneration is paid purposefully to induce or reward referrals of items or services payable by a Federal health care program, the anti-kickback statute is violated. By its terms, the statute ascribes criminal liability to parties on both sides of an impermissible "kickback" transaction. For purposes of the anti-kickback statute, "remuneration" includes the transfer of anything of value, directly or indirectly, overtly or covertly, in cash or in kind.

The statute has been interpreted to cover any arrangement where one purpose of the remuneration was to obtain money for the referral of services or to induce further referrals. United States v. Kats, 871 F.2d 105 (9th Cir. 1989); United States v. Greber, 760 F.2d 68 (3d Cir.), cert. denied, 474 U.S. 988 (1985). Violation of the statute constitutes a felony punishable by a maximum fine of $25,000, imprisonment up to five years, or both. Conviction will also lead to automatic exclusion from Federal health care programs, including Medicare and Medicaid. Where a party commits an act described in section 1128B(b) of the Act, the OIG may initiate administrative proceedings to impose civil monetary penalties on such party under section 1128A(a)(7) of the Act. The OIG may also initiate administrative proceedings to exclude such party from the Federal health care programs under section 1128(b)(7) of the Act.

Section 1128A(a)(5) of the Act provides for the imposition of civil monetary penalties against any person who gives something of value to a Medicare or state health care program, including Medicaid, beneficiary that the benefactor knows or should know is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier of any item or service for which payment may be made, in whole or in part, by Medicare or a state health care program, including Medicaid. The OIG may also initiate administrative proceedings to exclude such party from the Federal health care programs. Section 1128A(i)(6) of the Act defines "remuneration" for purposes of section 1128A(a)(5) as including, inter alia, the waiver of cost-sharing obligations (or any part thereof).[2]

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[2] The statute contains an exception to the definition of remuneration, not applicable here, for certain waivers of cost-sharing obligations that are not advertised, that are not routine,

B. Analysis

The "insurance only" billing under the Proposed Arrangement could implicate the anti-kickback statute to the extent that it constitutes a limited waiver of Medicare or other Federal health care program cost-sharing amounts. Our concern about potentially abusive waivers of Medicare cost-sharing amounts under the anti-kickback statue is longstanding. For example, we previously have stated that providers that routinely waive Medicare cost-sharing amounts for reasons unrelated to individualized, good faith assessments of financial hardship may be held liable under the anti-kickback statute. See, e.g., Special Fraud Alert, 59 Fed. Reg. 65372, 65374 (Dec. 19, 1994). Such waivers may constitute prohibited remuneration to induce referrals under the anti-kickback statute, as well as a violation of the civil monetary penalty prohibition against inducements to beneficiaries, section 1128A(a)(5) of the Act.

However, there is a special rule for providers and suppliers that are owned and operated by a state or a political subdivision of a state, such as a municipality or fire department. The Centers for Medicare & Medicaid Services ("CMS") Medicare Benefit Policy Manual ("BPM") Chapter 16, section 50.3.1 provides that:

> A [state or local government] facility which reduces or waives its charges for patients unable to pay, or charges patients only to the extent of their Medicare and other health insurance coverage, is not viewed as furnishing free services and may therefore receive program payment.

Pub. 100-02 BPM Chap. 16, section 50.3.1 at: http://www.cms.hhs.gov/manuals/Downloads/bp102c16.pdf (formerly Medicare Carrier Manual section 2309.4 and Medicare Intermediary Manual section 3153.3A). Notwithstanding the use of the term "facility," CMS has confirmed that this provision would apply to a state or municipal ambulance company that is a Medicare Part B supplier. CMS has also confirmed that this provision would apply to waivers of cost-sharing amounts for residents who need EMS transportation.

Accordingly, because Medicare would not require the County to collect cost-sharing amounts from residents, we would not impose sanctions under the anti-kickback statute where the cost-sharing waiver is implemented by the County categorically for bona fide residents of the County.[3] Nothing in this advisory opinion would apply to waivers of cost-sharing amounts based on criteria other than residency, as defined by the County.

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and that are made on the basis of individual determinations of financial need or for which reasonable collection efforts have been made. Section 1128A(i)(6) of the Act.

[3] We note that for the same reasons we would not impose sanctions under section 1128A(a)(5) of the Act.

We note that this provision of the CMS manual applies only to situations in which the governmental unit is the ambulance supplier; it does not apply to contracts with outside ambulance suppliers. For example, where a municipality contracts with an outside ambulance supplier for the provision of services to residents of its service area, the municipality cannot require the ambulance supplier to waive out-of-pocket cost-sharing amounts unless the municipality pays the cost-sharing amounts owed or otherwise makes provisions for the payment of such cost-sharing amounts. See, e.g., OIG Advisory Opinion No. 01-12 (July 20, 2001). There is an important difference between a municipally-owned ambulance company voluntarily waiving cost-sharing amounts for its own residents and a municipality requiring a private company to bill "insurance only" as a condition of getting the municipality's EMS transportation business, including Medicare business. Lump sum or periodic payments by the municipality, on behalf of residents or others, may be permitted if the payments are reasonably calculated to cover the expected uncollected cost-sharing amounts.

III. CONCLUSION

Based on the facts certified in your request for an advisory opinion and supplemental submissions, we conclude that the Proposed Arrangement would not generate prohibited remuneration under the anti-kickback statute. Accordingly, the OIG would not impose administrative sanctions on [name redacted] under sections 1128(b)(7) or 1128A(a)(7) of the Act (as those sections relate to the commission of acts described in section 1128B(b) of the Act) in connection with the Proposed Arrangement. In addition, the OIG would not impose administrative sanctions on [name redacted] under section 1128A(a)(5) of the Act in connection with the Proposed Arrangement. This opinion is limited to the Proposed Arrangement and, therefore, we express no opinion about any ancillary agreements or arrangements disclosed or referenced in your request letter or supplemental submissions.

IV. LIMITATIONS

The limitations applicable to this opinion include the following:

- This advisory opinion is issued only to [name redacted], the requestor of this opinion. This advisory opinion has no application to, and cannot be relied upon by, any other individual or entity.

- This advisory opinion may not be introduced into evidence in any matter involving an entity or individual that is not a requestor of this opinion.

- This advisory opinion is applicable only to the statutory provisions specifically noted above. No opinion is expressed or implied herein with

respect to the application of any other Federal, state, or local statute, rule, regulation, ordinance, or other law that may be applicable to the Proposed Arrangement, including, without limitation, the physician self-referral law, section 1877 of the Act.

- This advisory opinion will not bind or obligate any agency other than the U.S. Department of Health and Human Services.

- This advisory opinion is limited in scope to the specific arrangement described in this letter and has no applicability to other arrangements, even those which appear similar in nature or scope.

- No opinion is expressed herein regarding the liability of any party under the False Claims Act or other legal authorities for any improper billing, claims submission, cost reporting, or related conduct.

This opinion is also subject to any additional limitations set forth at 42 C.F.R. Part 1008.

The OIG will not proceed against [name redacted] with respect to any action that is part of the Proposed Arrangement taken in good faith reliance upon this advisory opinion, as long as all of the material facts have been fully, completely, and accurately presented, and the Proposed Arrangement in practice comports with the information provided. The OIG reserves the right to reconsider the questions and issues raised in this advisory opinion and, where the public interest requires, to rescind, modify, or terminate this opinion. In the event that this advisory opinion is modified or terminated, the OIG will not proceed against [name redacted] with respect to any action taken in good faith reliance upon this advisory opinion, where all of the relevant facts were fully, completely, and accurately presented and where such action was promptly discontinued upon notification of the modification or termination of this advisory opinion. An advisory opinion may be rescinded only if the relevant and material facts have not been fully, completely, and accurately disclosed to the OIG.

Sincerely,

/Lewis Morris/

Lewis Morris
Chief Counsel to the Inspector General

OGDEN MURPHY WALLACE PLLC
ATTORNEYS AT LAW

HEALTH LAW UPDATE
May 2003

Office of Inspector General Approves Waiver of Copayments and Deductibles for Ambulance Services to Residents of Fire District

On April 25, 2003, the Office of the Inspector General ("OIG") of the U.S. Department of Health and Human Services, issued an advisory opinion allowing a municipal corporation to treat tax revenues from residents as payment of copayments and deductibles. The OIG said that the proposed practice did not violate the federal anti-kickback statute. The advisory opinion was in response to an inquiry from a fire protection district that owned an ambulance service and was the exclusive provider of emergency medical services in its service area. The fire district did not subcontract its services. The fire district adopted an ordinance under which it billed residents only to the extent of their insurance coverage. The fire district treated the revenues from local taxes as payment of any applicable copayments and deductibles.

The fire district was concerned that its ordinance might violate the federal antikickback statute. The anti-kickback statute makes it a criminal offense knowingly and willfully to offer, pay solicit, or receive anything of value to induce referrals of items or services reimbursable by a federal health program. In 1994, the OIG issued a Special Fraud Alert emphasizing its concern over potentially abusive waivers of Medicare copayments and deductibles. The OIG generally views such waivers of copayments and deductibles as prohibited attempts to induce referrals.

However, the OIG approved the fire district's ordinance on the basis of a special rule for providers that are owned and operated by municipal corporations. The Centers for Medicare and Medicaid Services ("CMS") Carrier Manual states in section 2309.4:

> A [state or local government] facility which reduces or waives its charges for patients unable to pay, or charges patients only to the extent of their Medicare and other health insurance coverage, is not viewed as furnishing free services and may therefore receive program payment.

The OIG reasoned that because CMS would not require the fire district to collect copayments or deductibles from residents, the OIG would not impose sanctions under the antikickback statute if the fire district waived copayments and deductibles for residents. The OIG cautioned that this exemption applied only to bona fide residents or the employees of bona fide residents. The OIG also emphasized that the exemption applied only to situations in which the governmental unit is the ambulance supplier. If a municipality contracts with an outside ambulance suppler to provide services to residents, the municipality cannot require the ambulance supplier to waive coinsurance amounts unless the municipality pays the coinsurance.

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As with all OIG advisory opinions, the OIG cautioned that the opinion has no application to, and cannot be relied upon by, any other entity. However, other municipalities can rely on the exemption in the CMS carrier manual on which the OIG based it advisory opinion. The OIG's opinion appears to be a reasonable interpretation of the provision in the CMS manual that allows state or local government facilities to waive or reduce copayments or deductibles for residents. Some Washington state public hospital districts have implemented similar programs in the past and, in light of this advisory opinion, other public hospital districts may now wish to consider the viability of a similar program. A copy of the OIG Advisory Opinion is available online at: http://oig.hhs.gov/fraud/docs/advisoryopinions/2003/ao0309.pdf.

SPECIAL ADVISORY BULLETIN WARNS AGAINST SUSPECT JOINT VENTURES

The Office of the Inspector General ("OIG") of the U.S. Department of Health and Human Services has issued a Special Advisory Bulleting warning that certain joint ventures may violate the antikickback statute. The Bulletin focuses on joint ventures where a healthcare provider in one line of business (the "Owner") expands into a related business by contracting with an existing provider of a related item or service ("Supplier"). Generally, the Supplier manages the new line of business and often will supply it with inventory, employees, space, billing and other services. The OIG generally disapproves of this type of arrangement if the result is the Owner contracting out the entire line of business to a potential competitor and receiving in return the profits as compensation for referrals of patients insured by federal programs.

The OIG identified several indicia of a suspect joint venture. For example, an Owner may seek to expand into a new line of business to provide a service to its existing patient base. The Owner's primary contribution is referrals. The Owner has little or no financial risk. The Supplier is an entity that would normally be a competitor for the new line of business. The Supplier provides many of the key services, such as management, billing, equipment, personnel, and office space. The Owner's compensation takes into account the volume and value of services. An arrangement that meets some or all of the criteria may be considered suspect by the OIG under the AKS.

Of course, the presence or absence of some of these elements is not determinative of the legitimacy of a particular arrangement. In general, the opinion does not add any new analysis to its 1989 Fraud Alert as joint ventures. It may be possible to carefully structure a contractual joint venture that meets safe harbor protection under the AKS. However, the Bulletin is a warning that the OIG will look closely at joint ventures in general; and specifically joint ventures in which a new line of business is contracted out to a potential competitor. The full text of the Special Advisory Bulletin is available online at: http://oig.hhs.gov/fraud/docs/alertsandbulletins/042303SABJointVentures.pdf.

Office of Inspector General
Office of Public Affairs
330 Independence Ave., SW
Room 5541, Cohen Bldg.
Washington, DC 20201
(202) 619-1343

FACT SHEET

November 1999

Contact: Alwyn Cassil (202) 205-0333

FEDERAL ANTI-KICKBACK LAW AND REGULATORY SAFE HARBORS

Overview: *On the books since 1972, the federal anti-kickback law's main purpose is to protect patients and the federal health care programs from fraud and abuse by curtailing the corrupting influence of money on health care decisions. Straightforward but broad, the law states that anyone who knowingly and willfully receives or pays anything of value to influence the referral of federal health care program business, including Medicare and Medicaid, can be held accountable for a felony. Violations of the law are punishable by up to five years in prison, criminal fines up to $25,000, administrative civil money penalties up to $50,000, and exclusion from participation in federal health care programs.*

Because the law is broad on its face, concerns arose among health care providers that some relatively innocuous -- and in some cases even beneficial -- commercial arrangements are prohibited by the anti-kickback law. Responding to these concerns, Congress in 1987 authorized the Department to issue regulations designating specific "safe harbors" for various payment and business practices that, while potentially prohibited by the law, would not be prosecuted.

The Office of Inspector General has previously published 13 regulatory safe harbors, 11 in 1991 and two in 1992. A new final rule scheduled for publication in the Nov. 19, 1999, Federal Register *will establish eight new safe-harbor provisions and clarify six of the original 11 safe harbors published in 1991. These proposals were published in the Federal Register in 1993 and 1994 and have been significantly modified in response to voluminous public comments. Additionally, an interim final rule establishing a safe harbor for shared-risk arrangements is scheduled for publication in the Nov. 19, 1999,* Federal Register. *After publication of the two new rules, there will be a total of 23 anti-kickback safe harbors consolidated in the Code of Federal Regulations in 21 subparagraphs.*

SAFE HARBORS GENERALLY

Safe harbors immunize certain payment and business practices that are implicated by the anti-kickback statute from criminal and civil prosecution under the statute. To be protected by a safe harbor, an arrangement must fit squarely in the safe harbor. Failure to comply with a safe harbor provision does not mean that an arrangement is *per se* illegal. Compliance with safe harbors is voluntary, and arrangements that do not comply with a safe harbor must be analyzed on a case-by-case basis for compliance with the anti-kickback statute. Parties who are uncertain whether their arrangements qualify for safe harbor protection may request an advisory opinion. Instructions on how to request an advisory opinion are available on the Internet at *http://oig.hhs.gov.*

THE 13 EXISTING SAFE HARBORS

The 1991 safe harbors addressed the following types of business or payment practices: investments in large

publicly held health care companies; investments in small health care joint ventures; space rental; equipment rental; personal services and management contracts; sales of retiring physicians' practices to other physicians; referral services; warranties; discounts; employee compensation; group purchasing organizations; and waivers of Medicare Part A inpatient cost-sharing amounts. The 1992 interim final safe harbors, which were finalized in 1996, addressed the following practices in managed care settings: increased coverage, reduced cost-sharing amounts, or reduced premium amounts offered by health plans to beneficiaries; and price reductions offered to health plans by providers.

THE NEW SAFE HARBORS

The preamble to the new final rule includes a summary of each proposal from 1993 and 1994, a summary of each new safe harbor, and the Office of Inspector General's response to public comments on each topic area. The new safe harbors address the following areas: investments in underserved areas; practitioner recruitment in underserved areas; obstetrical malpractice insurance subsidies for underserved areas; sales of practices to hospitals in underserved areas; investments in ambulatory surgical centers; investments in group practices; referral arrangements for specialty services; and cooperative hospital service organizations.

Investments in Ambulatory Surgical Centers (ASCs)

The original proposal protected only Medicare-certified ASCs wholly owned by surgeons. Many in the industry urged that the original proposal be broadened. The expanded final rule protects certain investment interests in four categories of freestanding Medicare-certified ASCs: surgeon-owned ASCs; single-specialty ASCs (e.g., all gastroenterologists); multi-specialty ASCs (e.g., a mix of surgeons and gastroenterologists); and hospital/physician-owned ASCs. In general, to be protected, physician investors must be physicians for whom the ASC is an extension of their office practice pursuant to conditions set forth in the safe harbor. Hospital investors must not be in a position to make or influence referrals. Certain investors who are not existing or potential referral sources are permitted. The ASC safe harbor does not apply to other physician-owned clinical joint ventures, such as cardiac catheterization labs, end-stage renal dialysis facilities or radiation oncology facilities.

Joint Ventures in Underserved Areas

Often health care ventures in medically underserved areas have difficulty attracting needed capital, and, often, the best available sources of capital are local physicians. Many underserved area ventures cannot fit in the existing safe harbor for small entity joint ventures because that safe harbor limits physician ownership and the revenues that can be derived from referrals from physician investors. The underserved area joint venture safe harbor relaxes several of the conditions of the existing joint venture safe harbor. The new safe harbor permits a higher percentage of physician investors -- up to 50 percent -- and unlimited revenues from referral source investors. The new safe harbor expands on the 1993 proposal by including joint ventures in underserved urban, as well as rural, areas. To qualify, a venture must be located in a medically underserved area, as defined by Department regulation, and serve 75 percent medically underserved patients.

Practitioner Recruitment in Underserved Areas

This safe harbor protects recruitment payments made by entities to attract needed physicians and other health care professionals to rural and urban health professional shortage areas (HPSAs), as designated by the Health Resources and Services Administration. The safe harbor requires that at least 75 percent of the recruited practitioner's revenue be from patients who reside in HSPAs or medically underserved areas or are members of medically underserved populations, such as the homeless or migrant workers. The safe harbor limits the duration of payments to three years. The safe harbor does not prescribe the types of protected payments, such as income guarantees or moving expenses, leaving that determination to negotiation by the parties.

Because of the risk of disguised payments for referrals, the safe harbor does not protect payments made by hospitals to existing group practices to recruit physicians to join the group, nor does it protect payments to retain existing practitioners. Such arrangements remain subject to case-by-case review under the anti-kickback statute.

Sales of Physician Practices to Hospitals in Underserved Areas

This safe harbor protects hospitals in HPSAs that buy and "hold" the practice of a retiring physician until a new physician can be recruited to replace the retiring one. To qualify for safe harbor protection, the sale must be completed within three years, and the hospital must engage in good faith efforts to recruit a new practitioner.

Subsidies for Obstetrical Malpractice Insurance in Underserved Areas

This safe harbor protects a hospital or other entity that pays all or part of the malpractice insurance premiums for practitioners engaging in obstetrical practice in HPSAs. To qualify for protection, at least 75 percent of the subsidized practitioners' patients must be medically underserved patients.

Investments in Group Practices

This safe harbor protects investments by physicians in their own group practices, if the group practice meets the physician self-referral (Stark) law definition of a group practice. The safe harbor also protects investments in solo practices where the practice is conducted through the solo practitioner's professional corporation or other separate legal entity. The safe harbor does not protect investments by group practices or members of group practices in ancillary services' joint ventures, although such joint ventures may qualify for protection under other safe harbors.

Specialty Referral Arrangements Between Providers

The safe harbor protects certain arrangements when an individual or entity agrees to refer a patient to another individual or entity for specialty services in return for the party receiving the referral to refer the patient back at a certain time or under certain circumstances. For example, a primary care physician and a specialist to whom the primary care physician has made a referral may agree that, when the referred patient reaches a particular stage of recovery, the primary care physician should resume treatment of the patient. The safe harbor does not protect arrangements involving parties that split a global fee from a federal program. The safe harbor requires that referrals be clinically appropriate, rather than based on arbitrary dates or time frames.

Cooperative Hospital Services Organizations

This safe harbor protects cooperative hospital service organizations (CHSOs) that qualify under section 501(e) of the Internal Revenue Code. CHSOs are organizations formed by two or more tax-exempt hospitals, known as "patron hospitals," to provide specifically enumerated services, such as purchasing, billing, and clinical services solely for the benefit of patron hospitals. The safe harbor will protect payments from a patron hospital to a CHSO to support the CHSO's operational costs and payments from a CHSO to a patron hospital that are required by IRS rules.

CLARIFICATION OF EXISTING SAFE HARBORS

The new final rule clarifies aspects of the original safe harbors for large and small entity investments; space rental; equipment rental; personal services and management contracts; referral services; and discounts. Many

of the changes are technical in nature. The intent of the clarifications is to make the regulations easier for the industry to understand and apply to particular factual circumstances.

Withdrawal of Proposed "Sham" Transactions Rule

The Office of Inspector General elected not to adopt the "sham" transactions rule proposed in the 1994 proposed regulation. However, the preamble to the new rule makes clear that safe harbors only protect arrangements if the form and substance of the transaction conform to the safe harbor in which shelter is sought.

SHARED-RISK SAFE HARBORS

In 1996, Congress enacted a new exception to the anti-kickback statute for certain shared-risk arrangements and directed the Department to issue regulations through a negotiated rulemaking process. The negotiating committee, composed of industry and government representatives, issued a joint committee statement in January 1998 that describes the agreement reached by the committee and served as a guideline for the government's rulemaking. The interim final rule with comment period for the shared-risk exception is also scheduled for publication in the Nov. 19, 1999, *Federal Register.*

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