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Addendum to “Hospital Discounts to Patients Who Cannot Afford to Pay their Hospital Bills (02/02/2004)”

On February 2, 2004, the Office of Inspector General (OIG) published on its website (<http://oig.hhs.gov/fraud/docs/alertsandbulletins/2004/FA021904hospitaldiscounts.pdf>) a document entitled “Hospital Discounts to Patients Who Cannot Afford to Pay Their Hospital Bills.” This document discussed the OIG’s views on discounts offered to patients who cannot afford to pay their hospital bills under the Federal anti-kickback statute at section 1128B(b) of the Social Security Act (“Act”), 42 U.S.C. § 1320a-7b(b), and the exclusion authority at section 1128(b)(6)(A) of the Act, 42 U.S.C. § 1320a-7(b)(6)(A). The February 2, 2004 document continues to be current guidance, with the following clarification.

In the February 2, 2004, document, the OIG stated that:

The OIG has never excluded or attempted to exclude any provider or supplier for offering discounts to uninsured or underinsured patients. However, to provide additional assurance to the industry, the OIG recently proposed regulations that would define key terms in the statute. Among other things, the proposed regulations would make clear that free or substantially reduced charges to uninsured persons would not affect the calculation of a provider’s or supplier’s “usual” charges, as the term “usual charges” is used in the exclusion provision. The OIG is currently reviewing the public comments to the proposed regulations. Until such time as a final regulation is promulgated or the OIG indicates its intention not to promulgate a final rule, it will continue to be the OIG’s enforcement policy that, when calculating their “usual charges” for purposes of section 1128(b)(6)(A), individuals and entities do not need to consider free or substantially reduced charges to (i) uninsured patients or (ii) underinsured patients who are self-paying patients for the items or services furnished. [emphasis in original]

The OIG has completed its review of the public comments to the proposed regulation described in the preceding paragraph and has concluded that it will not promulgate a final rule. Notwithstanding this determination, it remains OIG’s enforcement policy that, when calculating their “usual charges” for purposes of section 1128(b)(6)(A), individuals and entities do not need to consider free or substantially reduced charges to (i) uninsured patients or (ii) underinsured patients who are self-paying patients for the items or services furnished. The decision to forgo publishing a final regulation will not change the OIG policy announced in the February 2, 2004 document.