

HEALTH CARE ALERT

2/12/14

Office of Inspector General Adds Executive Compensation Benchmark in 2014

The Office of Inspector General (“OIG”) Work Plan for fiscal year 2014 has introduced executive compensation within its enumerated areas of focus. The most recent inclusion shows that the OIG is examining health care organizations more closely, evaluating existing corporate policies and compliance programs as a measure of the company’s commitment to ensuring integrity in the delivery of health care services. Making reasonable compensation a high priority area for 2014, the OIG has explained that the additional benchmark is part of the government’s effort to “correct fraud, waste, and abuse within federally funded health care programs.”

The executive compensation benchmark will be implemented by the OIG in its review of health care salary data to examine employee compensation¹ that is submitted to Medicare for reimbursement and the corresponding impact on the Medicare Trust Fund. Realizing the potential cost savings, the OIG will now closely review the total compensation paid to Medicare contractors to determine whether the compensation benchmarks that are currently applicable to senior executives² should be extended to independent contractors. The OIG will further determine whether the executive compensation benchmark may be expanded to include all employees of entities that receive reimbursement. 48 C.F.R. § 31.205-6(p). Through this evaluation, the OIG will make an assessment as to whether compensation is reasonable in considering the (i) size; (ii) industry; (iii) geographic area; and (iv) compensation of peers (non-government) in comparable positions. 48 C.F.R. § 31.205-6(b)(2). During this assessment, the health care entity should review comparability data from “similarly qualified” or “functionally comparable” facilities in determining and establishing reasonable compensation for their executives and independent contractors.

Presently, there are no limitations as to what health care entities may include in their executive compensation packages. The CMS Provider Reimbursement Manual, Part 1, Pub. No. 15-1, Ch. 9 § 902.2 provides that compensation may only be included in allowable provider costs to the extent that it represents “reasonable remuneration for managerial, administrative, professional and other services related to the operation of the facility and furnished in connection with patient care.” Health care entities will be required to determine whether Medicare contractors have calculated and claimed reimbursement for Medicare’s share of employee pension costs and whether a separate accounting for those pension assets and liabilities allocable to Medicare have been documented.

The governing body of health care entities, e.g., the board of directors, subject to the new rules, should evaluate the current compensation practices, polices and controls by:

- preparing or reviewing compensation charter and philosophy;
- obtaining approval by an independent board of directors or “other governing body,” which is free of conflicts of interests;
- reviewing and evaluating comparability data; and

¹ “Compensation” means the total amount of wages, salary, bonuses, deferred compensation, and employer contributions to defined contribution pension plans, for the fiscal year, whether paid, earned, otherwise accruing, as recorded in the contractor’s cost accounting records for the fiscal year. 48 C.F.R. § 31.205-6(p)(2)(i).

² “Senior Executive” means the five most highly compensated employees in management positions at each home office and each segment of the contractor, whether or not the home office or segment reports directly to the contractor’s headquarters. 48 C.F.R. § 31.205-6(p)(2)(ii)(B).

- memorializing the compensatory arrangements, in writing, contemporaneously with such decisions.

Our Health Care and Employee Benefits & Executive Compensation attorneys are well versed on the 2014 OIG initiatives and may advise your health organization as to whether total compensation paid is in compliance with the new benchmarks.

For further information, please contact the following Roetzel attorneys:

Anthony J. Calamunci

419.254.5247 | acalamunci@ralaw.com

Brian E. Dickerson

202.570.0248 | bdickerson@ralaw.com

Ned Milenkovich

312.582.1676 | nmilenkovich@ralaw.com

James Schuster

216.820.4231 | jschuster@ralaw.com

Jonathan R. Secrest

614.723.2029 | jsecrest@ralaw.com

David C. Strosnider

312.582.1688 | dstrosnider@ralaw.com

Nicole Hughes Waid

202.906.9572 | nwaid@ralaw.com

Anne E. Brown

312.580.1636 | aebrown@ralaw.com

Amy L. Butler

419.254.5270 | abutler@ralaw.com

Amanda M. Knapp

216.615.7416 | aknapp@ralaw.com