Healthcare Law Alert – OIG Issues Year-End CMP and Anti-Kickback Regulatory Amendments and Updated Policy Statement

On June 2, 2017, a South Carolina Hospital, AnMed Health (AnMed), agreed to pay almost $1.3 million to settle allegations arising from an Emergency Medical Treatment and Labor Act (EMTALA) investigation by the Office of the Inspector General (OIG) for the United Stated Department of Health and Human Services. This settlement is noteworthy not only because it is the largest such settlement ever in United States history, but also because of the non-traditional nature of the alleged violations.

The OIG claimed that 35 patients were brought to AnMed's emergency department suffering from psychiatric emergencies and were involuntarily held there, without psychiatric treatment, for between 6 and 38 days. Specifically, the OIG claimed that "[i]nstead of being examined and treated by on-call psychiatrists, the patients were involuntarily committed, treated by the ED physicians and kept in AnMed's ED for days or weeks instead of being admitted to AnMed's psychiatric unit for stabilizing treatment." The patients in question were provided medical screening examinations as required by EMTALA, albeit by ED physicians and not psychiatrists, and AnMed further sought transfers to state psychiatric hospitals. However, the OIG asserted that AnMed's process was inadequate, stating that, "AnMed had on-call psychiatrists and beds available in its psychiatric unit to further evaluate and/or stabilize the patients' emergency medical conditions."

In its defense, AnMed claimed that it did not admit patients to its psychiatric unit because it had a policy restricting that unit to voluntary patients. The OIG apparently determined that the policy did not limit AnMed's "capabilities", as that term is used in EMTALA, and asserted that because it had psychiatric beds and on-call psychiatrists who should have provided treatment to these patients, "AnMed had the capabilities to provide appropriate psychiatric evaluations and treatment to stabilize these [patients'] emergency medical conditions".

It is possible that the $1.3 million settlement amount was impacted both by the number of patients involved and by AnMed's policy directing ED physicians to write transfer orders to state facilities when patients required involuntary psychiatric admissions, or, as alleged in the Settlement Agreement but denied by AnMed, when the patients lacked financial resources.

The takeaway from this settlement is likely that, when presented with ED patients exhibiting potential psychiatric symptoms, hospitals with psychiatrists on-call or that otherwise provide psychiatric services should ensure that that such patients are seen by the on-call psychiatrist and, if clinically indicated, admitted to the hospital's psychiatric unit for stabilizing treatment. Holding such patients in a hospital's ED will likely be seen by the OIG as insufficient and possibly violative of EMTALA. The challenge in New York is that inpatient psychiatric beds are in short supply and the lack of psychiatric resources, particularly for children, increases the EMTALA risks for all New York hospitals when it comes to care for such individuals.

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