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**OIG ISSUES FAVORABLE ADVISORY OPINION  
REGARDING HOSPITAL LEASING ARRANGEMENT**

By: Meghan V. Hoppe, Esq.

On July 20, 2015, the United States Department of Health and Human Services, Office of Inspector General (“OIG”) issued Advisory Opinion No. 15-10 addressing a health system’s proposal to lease non-clinician employees and to provide operational and management services to a psychiatric hospital in its integrated health network. The OIG determined that the proposal presented a low risk of fraud and abuse and declined to impose administrative sanctions.

The opinion was requested by a non-profit health system (the “System”) that owns a number of other hospitals and health care providers, including the psychiatric hospital at issue (the “Center”). Under an existing arrangement, the Center leases non-clinician employees and receives operational and management services from the System; in exchange, the Center pays the System’s fully loaded costs (*i.e.*, salary, benefits and overhead expenses), plus a two percent (2%) administrative fee. The proposed arrangement would mirror the existing arrangement; however, the Center would pay only the System’s fully loaded costs without any mark-up or administrative fee for the leased employees or purchased services (the “Proposed Arrangement”).

The Center and the System certified that the Proposed Arrangement and the existing arrangement aim to integrate the Center into the System and to achieve cost efficiencies between the organizations. Moreover, the services at issue are unavailable elsewhere at a lower aggregate cost than under the Proposed Arrangement. Although the payments are not tied to volume or value of referrals between the parties, the aggregate compensation cannot be set in advance. Moreover, the parties acknowledge that the costs charged to the Center could be below fair market value in an arms-length transaction.

The OIG opined that the Proposed Arrangement could potentially implicate the anti-kickback statute because the System would charge the Center, a potential referral source, a rate that could be below fair market value; this rate could be viewed as compensation in exchange of referrals. The OIG noted that neither the personal services nor the management contracts safe harbors would apply because the compensation could be below fair market value and could not be set in advance. Nevertheless, the OIG declined to impose administrative sanctions, as the Proposed Arrangement had a low risk of fraud and abuse because it was structured to comply with the Medicare cost reporting rules for related organizations, the parties certified that the Proposed Arrangement would achieve cost efficiencies and provide indirect

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benefits to Federal health care programs and finally, there was no evidence to suggest that it was designed to induce referrals.

Should you have any questions regarding Advisory Opinion 15-10 or any other arrangements among health care providers involving potential sources of referrals, do not hesitate to contact one of the health care attorneys at Schenck, Price, Smith & King, LLP.

**DISCLAIMER:** This Client Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client. If someone you know would like to receive this Client Alert, please send a message to Meghan V. Hoppe, Esq., an associate in the Health Care Practice Group at [mvh@spsk.com](mailto:mvh@spsk.com).

**FLORHAM PARK**

220 Park Avenue  
PO Box 991  
Florham Park, NJ 07932  
Tel: 973-539-1000  
[www.spsk.com](http://www.spsk.com)

**PARAMUS**

Country Club Plaza  
115 West Century Road Suite 100  
Paramus, NJ 07652  
Tel: 201-262-1600

**SPARTA**

351 Sparta Avenue  
Sparta, NJ 07871  
Tel: 973-295-3670

**NEW YORK**

116 West 23<sup>rd</sup> Street  
Suite 500  
New York, NY 10011  
Tel: 212-386-7628