

Amy Kearbey Discussed HHS-OIG Advisory Opinion on Physician-Employee Bonuses with Law360

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Winston & Strawn partner Amy Kearbey spoke with Law360 about the recent advisory opinion by the Office of Inspector General (OIG) that concluded that a physician group practice that operates ambulatory surgery centers could pay bonuses to employed physicians based on the group's net profits from the physician's ASC procedures without violating the federal Anti-Kickback Statute. OIG stated that the bonuses would be protected by the safe harbor for remuneration to bona fide employees.

While some courts have attempted to narrow the scope of employment safe harbor, the OIG isn't following suit. "This opinion reflects OIG continuing to interpret that safe harbor — which is also a statutory exception directed by Congress — as being very broad," Amy said.

Amy also noted that the Advisory Opinion is silent with respect to whether the compensation paid to the employed physicians is fair market value.

"I think [this] reflects that OIG's view is that fair market value is not a factor in assessing the applicability or the availability of the employment exception," she said.

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