PUBLICATION

OIG Approves Another Medigap/Preferred Hospital Network Arrangement in Advisory Opinion 16-11 [Ober|Kaler]

2016

On November 3, 2016, the OIG issued another favorable Advisory Opinion, No. 16–11 [PDF], regarding an agreement between a Medigap insurer and preferred hospital network. The OIG has issued several opinions regarding similar arrangements, including Advisory Opinion Nos. 16-01 [PDF], 16-04 [PDF], and 16-05 [PDF], in 2016. Under the proposed arrangement, a Medigap plan contracted with a preferred hospital organization (PHO), which in turn contracted with a national network of participating hospitals open to any willing, qualifying provider. Under the contract, the PHO hospitals would waive Part A inpatient deductibles for plan members. A beneficiary with a qualifying hospital stay could receive a $100 premium discount upon renewal of the Medigap plan. The OIG determined that the proposed arrangement implicated both the anti-kickback statute and the civil monetary penalty for beneficiary inducement but concluded in both cases that it would not pursue sanctions against the Medigap plan in relation to the Proposed Arrangement.

The OIG found that the arrangement did not qualify for safe harbor protection for waiver of cost-sharing or for reduced payment premium amounts under the anti-kickback statute. Nevertheless, OIG determined that the arrangement presented a minimal risk of fraud and abuse because i) it would not affect per-service Medicare payments; ii) it would be unlikely to increase utilization because the benefits would be invisible to beneficiaries – the cost-sharing would be covered by insurance in any event; iii) the PHO network is open to all willing providers; iv) medical judgment would be unaffected because no remuneration is provided to doctors; and v) beneficiaries would not incur a penalty for choosing a non-network hospital.

With regard to the CMP for beneficiary inducement, the OIG determined that an exception allowing differentials in deductibles and cost sharing as part of plan design for health insurance plans, while not directly applicable here, would apply sufficiently by analogy to reduce the risk that beneficiaries would be unduly influenced by the described benefit. Further, the OIG determined that the arrangement, which would be reported to state insurance rate-setting agencies, could lead to savings that would reduce charges for all plan members, regardless of whether they had qualifying hospital stays.