

PUBLICATION

OIG Approves Another Medigap-Preferred Hospital Networks Arrangement [Ober|Kaler]

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The U.S. Department of Health & Human Services, Office of Inspector General (OIG) issued Advisory Opinion 15-09 [PDF] on July 16, 2015, once again approving Medicare Supplemental Health Insurance (Medigap) insurers indirect use of a preferred hospital network (PHO) for discounts on inpatient deductibles because the discounts were of a sufficiently low risk of fraud and abuse. In doing so, OIG concluded that it would not impose administrative sanctions under the antikickback statute (AKS) or the civil monetary penalties law (CMP) that prohibits beneficiary inducement.

Similar to previous requests, the requestors explained that, as offerors of Medigap policies (excluding Medicare SELECT plans), they proposed to contract with a PHO so that the member hospitals would offer up to a 100 percent discount on Medicare Part A inpatient hospital deductibles for Medigap plan policyholders. In return, the requestors would pay the PHO an administrative fee each time the requestors received a discount from a member hospital. The requestors would share this savings as a \$100 renewal premium credit only with policyholders who had an inpatient stay at a member hospital. In contrast, the requestors would pay the full Part A hospital deductible if policyholders were admitted to non-member hospitals. Finally, the requestors would report their savings from the proposed arrangement in their annual experience exhibits and loss ratios filed with state insurance departments.

OIG continues to acknowledge that while the proposed arrangement implicates both the CMP and the AKS, it also presents a low risk of fraud and abuse. OIG concluded that the arrangement did not meet any AKS safe harbor protections, but considered the following factors favorably in its decision:

1. Part A payments would be fixed—neither the discounts nor the premium credits would affect per-service Medicare payments.
2. Medigap policyholders were unlikely to increase utilization because the discount is invisible to them—either Medigap paid the deductible or the PHO-member hospital waived the deductible.
3. Competition among hospitals remained competitive because all qualified hospitals could join the PHO.
4. Each physician's medical judgment on what to do and to which hospital to admit the patient would be unaffected because physicians were not paid remuneration and patients retained the choice of hospital.
5. The requestors would make clear to policyholders that they retain the freedom of choice to receive care at any hospital without incurring additional expenses.

OIG also reiterated its long-standing analysis under the CMP. OIG explained that the \$100 premium credit is similar to a coinsurance or deductible differential—either of which is allowed with proper notice and other requirements. This similarity presented a low risk of fraud and abuse.