

PUBLICATION

OIG Approves Yet Another Medigap Policy Contract with Preferred Hospital Network [Ober|Kaler]

2014: Issue 21

On September 17, 2014, the U.S. Department of Health & Human Services, Office of Inspector General (OIG) issued Advisory Opinion 14-08. This opinion is yet another favorable advisory opinion approving a Medicare Supplemental Health Insurance (Medigap) insurer's use of a preferred hospital network. In keeping with prior favorable opinions, the OIG determined that it would not impose administrative sanctions tied to the antikickback statute (AKS) or the civil monetary penalty provision against inducements to beneficiaries (CMP Law).

Under the proposed arrangement, network hospitals would discount the Medicare Part A inpatient deductibles for the requestor's policyholders, up to 100 percent, relieving the requestor of financial accountability for an amount it would otherwise be liable to pay. The requestor would share the resulting savings with policy beneficiaries, and it would pay an administrative fee for each discount received. Ultimately, the requestor would return some of the savings, in the form of a \$100 credit toward a renewal premium, to policyholders who experienced inpatient stays at network hospitals. The savings realized under the proposed arrangement would be reflected on the requestor's annual experience exhibits. When policyholders are admitted to non-network hospitals, the requestor would pay the full Part A hospital deductible.

The OIG noted that the proposed arrangement implicates both the CMP Law and the AKS. With regards to the CMP Law, the OIG analogized the premium credits to a differential in a coinsurance or deductible amount, for which there is an exception that protects plans through which policyholders pay different cost-sharing amounts for network and non-network providers. The OIG concluded that the premium credit has substantially the same purpose and effect as such a differential, and it would therefore present a sufficiently low risk of fraud and abuse.

The OIG also analyzed the proposed agreement under the AKS and found that it would not be protected by any safe harbor. The safe harbor for reduced premium amounts offered by health plans offers no protection because the premium discounts would be offered only to enrollees who choose network hospitals and not to *all* enrollees as is required by the safe harbor. 42 C.F.R. § 1001.952(l). Similarly, the proposed arrangement is not protected by the safe harbor for waivers of beneficiary coinsurance and deductible amounts because that safe harbor specifically excludes such waivers when they are built into agreements with insurers. 42 C.F.R. § 1001.952(k). Given that the proposed arrangement does not qualify for safe harbor protections, the OIG analyzed whether it poses more than a minimal risk of fraud and abuse. The OIG concluded that it presented a sufficiently low risk of fraud and abuse under the AKS because:

1. Part A payments would be fixed and would be unaffected by beneficiary cost-sharing.
2. The discounts are invisible to policyholders, making them unlikely to increase utilization.
3. The network would not unfairly affect competition because it would be open to qualified hospitals.
4. Professional medical judgment would not be affected because physicians would not receive remuneration.
5. The requestor would make clear to policyholders that they retain the freedom of choice.