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OIG Advisory Opinion 17-06: Another Medigap/PHO Arrangement Approved

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Advisory Opinion 17-06 joins a long list of opinions approving arrangements between a Medicare Supplemental Health Insurance (Medigap) insurer and a preferred hospital organization (PHO). While this advisory opinion does not offer new insights with respect to Medigap/PHO arrangements, the OIG has remained consistent in its approach to them.

As with prior similar requests, the Medigap insurer here sought approval of an agreement in which it would contract with a PHO, and the hospitals within the PHO's network would provide discounts of up to 100 percent on the Medicare Part A inpatient hospital deductibles covered by the insurer. The hospitals would not provide any additional benefits to the Medigap insurer or its policyholders, and the insurer would pay a fee to the PHO for administrative services each time it received a discount. The Medigap insurer would also return a portion of the savings to those policyholders who had an inpatient stay at a network hospital via a $100 credit toward their next renewal premium. The use of non-network hospitals would not subject policyholders to penalties or otherwise affect liability for costs covered by the Medigap plans.

In line with its prior advisory opinions, the OIG unsurprisingly determined that it would not impose administrative sanctions under the Anti-Kickback Statute or the civil monetary penalty against inducements to beneficiaries with respect to this arrangement.

In discussing the Anti-Kickback Statute, the OIG noted that this arrangement did not qualify for protection under the safe harbors applicable to waivers of cost-sharing amounts and reduced premiums. However, the OIG determined that the arrangement presented a sufficiently low risk of fraud or abuse. The OIG specifically noted that the arrangement (1) would not affect per-service Medicare payments; (2) was unlikely to increase utilization because the discount applied to amounts already covered by the Medigap plans; (3) would not unfairly affect competition because the PHO would be open to any accredited, Medicare-certified hospital satisfying applicable state law requirements; (4) was unlikely to affect professional medical judgment because providers would not receive any remuneration and policyholders would not incur any additional out-of-pocket expense by selecting a non-network hospital; and (5) would operate transparently in that the Medigap insurer would educate policyholders about their freedom to select hospitals without penalty.

The OIG also remained consistent in determining that the arrangement presented a sufficiently low risk of fraud or abuse with respect to the prohibition on inducements to beneficiaries. The OIG explained that the arrangement was substantially similar to a differential in coinsurance or deductible amounts, which falls within a recognized exception. Moreover, the OIG noted that the arrangement has the potential to lower costs for all policyholders.