

PUBLICATION

OIG Issues (Another) Favorable Advisory Opinion Regarding Medigap/Preferred Hospital Network Arrangement in Advisory Opinion 16-01 [Ober|Kaler]

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On January 7, 2016, the Department of Health and Human Services, Office of Inspector General (OIG) issued Advisory Opinion 16-01 [PDF], approving yet another insurer's proposed contract with a preferred hospital network.

The advisory opinion is one in a series of OIG Advisory Opinions addressing preferred hospital network discounts under the anti-kickback statute and the civil monetary penalty prohibition against inducements to beneficiaries. The OIG again concludes that a Medigap insurer's contract with a preferred hospital network to receive discounts on Medicare inpatient deductibles poses a low risk of fraud and abuse.

The Medigap insurers requesting the advisory opinion proposed to contract with a network of preferred hospitals for discounts on Medicare inpatient deductibles for their policyholders and to provide a premium credit to policyholders who use a preferred hospital for inpatient stays. The preferred hospitals would provide up to 100 percent discounts on Part A inpatient deductibles incurred by policyholders. The requestors would be relieved from paying the discounted amount, but would pay the preferred hospital network a fee for administrative services with each discount received. The arrangement would not affect the policyholders' liability to pay for covered services. Policyholders would receive a portion of the savings resulting from their use of a preferred hospital and would be well-informed of this arrangement through notification letters and biannual updates.

The OIG concluded that it would not impose administrative sanctions under either the anti-kickback statute or the civil monetary penalty prohibition against inducements to beneficiaries because the premium credit presented a sufficiently low risk of fraud and abuse and the potential for savings for beneficiaries. The OIG noted:

- The per-service Medicare payments would not be affected by the discounts and premium credits.
- It is unlikely that the arrangement would increase utilization because the discount applies only to the portion of the cost-sharing obligation that the insurer is obligated to cover.
- It is unlikely to affect competition because the preferred hospital network would be open to "any accredited, Medicare-certified hospital that meets the requirements of applicable state laws and that contractually agrees to discount all or a portion of the Part A deductibles for Policyholders."
- It is unlikely to affect professional medical judgment because physicians and surgeons would not receive remuneration. In addition, requestors would make clear to policyholders that they may choose to be treated at a non-network hospital without sustaining further out-of-pocket costs.