PUBLICATION

Premium Credits Offered to Medigap Policyholders Okayed by OIG [Ober|Kaler]

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The OIG has approved a licensed insurance broker's proposal to establish a preferred hospital network as part of Medicare Supplemental Health Insurance policies (Medigap) and related premium credit offered to policy holders. The advisory opinion approving the proposed arrangement is consistent with the recently issued Advisory Opinion 14-02 and other prior opinions related to similar arrangements. Following its previous analyses, the OIG concluded in Advisory Opinion 14-04 that the proposed arrangement would not warrant the imposition of sanctions under the civil monetary prohibition against inducements to beneficiaries or the antikickback statute.

The licensed insurance broker requesting the advisory opinion offers Medigap policies as well as other insurance products. The requestor proposed to indirectly enter into arrangements with hospitals, via a preferred provider organization (PPO), pursuant to which the hospitals would agree to waive otherwise-applicable Medicare inpatient deductibles for the insurer's policyholders. In turn, the insurer would offer its policyholders using such in-network hospitals a $100 credit towards the policyholders' next renewal premiums.

More specifically, network hospitals would agree to waive up to 100 percent of the requestor's Medigap policyholders' inpatient deductibles, which ordinarily would be paid by the requestor. In exchange, each time one of the policyholders received a waiver, the requestor would pay the PPO an administrative fee. In addition, the requestor would pass some of the realized cost savings to its policyholders in the form of $100 credits toward the policyholders' policy renewal premiums. The deductible waiver would be the sole benefit provided by the network hospitals to the requestor. For a policyholder utilizing a non-network hospital, the requestor would pay the full Part A deductible, and the policyholder would not receive a credit.

The requestor's marketing materials would advertise the availability of the credit, and materials provided to enrollees and prospective enrollees would list the plans that feature the credit and identify participating network hospitals. The opportunity to participate in the proposed arrangements would be open to any accredited, Medicare-certified hospital appropriately licensed under state law. Finally, the savings realized by the requestor would be reported to state insurance departments on an annual basis through annual experience exhibits, such that cost savings could be taken into account by state insurance departments in reviewing and approving premium rates.

Analyzing the proposed arrangement under the antikickback statute, the OIG determined that neither the safe harbor for waivers of beneficiary coinsurance and deductible amounts nor the safe harbor for reduced premium amounts offered by health plans applied. Nonetheless, the OIG concluded, the proposed arrangement presents a low risk of fraud or abuse for the following reasons:

- Part A payments for inpatient services are fixed, so waivers or reductions in beneficiary cost sharing would not impact or affect per-service Medicare payments.
- Utilization is unlikely to be influenced because beneficiaries would not be directly aware of the discounts that are provided (as they are payments for which the requestor would be liable, and waivers of fees for inpatient services are, in any event, unlikely to influence utilization).
- Hospital competition would not be adversely impacted because participation in networks would be open to all Medicare-certified hospitals that comply with requirements under state law.

- The remuneration would not affect medical judgment because patient deductibles would not be impacted by beneficiary hospital selection and because physicians and surgeons would receive no remuneration whatsoever.
- The policyholders would be informed that they were able to choose any hospital they wanted without penalty or increased cost.

Because the premium credits would be offered to policyholders as an incentive to select a particular provider (a network hospital), the OIG next analyzed the arrangement under the civil monetary provision prohibiting remuneration to beneficiaries. The OIG concluded that, although not identical, premium credits are sufficiently similar in purpose and effect to differentials in coinsurance or deductible amounts, which are excepted from the definition of remuneration. In addition, the OIG noted that the arrangement had the potential to reduce costs to certain Medigap policyholders without increasing costs to others and to reduce state-insurance rates overall.