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OIG Advisory Opinion 18-04: Another Favorable Medigap/PHO Arrangement

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On June 7, 2018, the OIG issued favorable Advisory Opinion 18-04, thereby approving another arrangement between a group of Medicare Supplemental Health Insurance (Medigap) insurers and a preferred hospital organization (PHO). Consistent with prior favorable opinions on this topic, the OIG concluded that the proposed arrangement does not constitute grounds for the imposition of civil monetary penalties, and that it would not impose administrative sanctions in connection with the Anti-Kickback Statute with respect to the proposed arrangement.

The Medigap insurers sought approval of an agreement in which they would contract with a national 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 insurers. The hospitals would provide no additional benefits to the Medigap insurers or their policyholders, and the insurers would pay an administrative services fee to the PHO each time it received a discount.

The Medigap insurers would 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. Rather, the policyholders would simply be required to pay the full Part A hospital deductible for facilities outside of the PHO's network.

In reviewing the proposed arrangement, the OIG noted 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 afforded the proposed arrangement protection. Absent safe harbor protection, the OIG then analyzed both aspects of the proposed arrangement under the civil monetary penalty (CMP) provisions and the Anti-Kickback Statute.

The OIG concluded that the proposed discounts on inpatient deductibles provided by network hospitals represented a sufficiently low risk of fraud or abuse. The OIG specifically noted that the proposed 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 receive no remuneration and policyholders would not incur additional out-of-pocket expense by selecting a non-network hospital; and (5) would operate transparently in that the Medigap insurers would educate policyholders about their freedom to select hospitals without penalty.

With respect to premium credits to be offered to beneficiaries, the OIG also remained consistent with prior favorable advisory opinions in concluding that the proposed arrangement presented a sufficiently low risk of fraud or abuse under the Anti-Kickback Statute and the CMP prohibition on inducements to beneficiaries. The OIG explained that the proposed arrangement's premium credits were substantially similar to a differential in coinsurance or deductible amounts, which falls within a recognized exception. Moreover, the OIG also noted that the proposed arrangement had the potential to lower costs for all policyholders due to state insurance reporting obligations.