

PUBLICATION

It's Déjà Vu All Over Again as OIG Approves Yet Another Medigap/PHO Arrangement in Advisory Opinion 18-09

August 2018

With Advisory Opinion 18-09, the OIG continued its trend of approving arrangements between Medicare Supplemental Health Insurance (Medigap) insurers and preferred hospital network organizations (PHOs). As in prior advisory opinions, the OIG concluded in its August 14, 2018 advisory opinion that the proposed arrangement does not constitute grounds for civil monetary penalty against inducements to beneficiaries or administrative sanctions in connection with the Anti-Kickback Statute.

The proposed arrangement provides that when a Medigap policyholder selects an in-network hospital for Medicare Part A inpatient services, the in-network hospital would discount (sometimes up to 100 percent) the deductible incurred by the Medigap policyholders. The Medigap policyholder would then receive a credit to reduce future premiums and the Medigap insurer would pay the PHO an administrative fee. Cost-sharing amounts are not eligible under the proposed arrangement.

With respect to the Anti-Kickback Statute, the OIG found that the arrangement did not qualify for protection under the safe harbors for (1) waiver of beneficiary coinsurance and deductibles (42 C.F.R. 1001.952(k)) or (2) reduced premium amounts by health plans (42 C.F.R. 1001.952(1)). Nonetheless, the OIG concluded that the proposed arrangement presented a sufficiently low risk of fraud or abuse under the Anti-Kickback Statute because:

- Per-service Medicare payments remain the same.
- Utilization is unlikely to increase because the cost sharing would be covered by insurance, which makes the benefit effectively invisible to beneficiaries.
- The PHO is open to any accredited, Medicare-certified hospital that meets applicable state requirements.
- Medical judgment is unaffected because no remuneration is provided to physicians.
- Medigap policyholders retain the freedom to choose any hospital and do not incur a penalty for choosing a hospital that is not in the network.

With respect to the civil monetary penalty against inducements to beneficiaries, the OIG concluded that the premium credits to be offered to policyholders were analogous to an exception to the definition of remuneration and presented a sufficiently low risk of fraud or abuse.