PUBLICATION

Another Medigap/Preferred Hospital Network Arrangement Approved by OIG in Advisory Opinion 16-05 [Ober|Kaler]

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On May 3, 2016, the U.S. Department of Health and Human Services Office of Inspector General (OIG) issued another favorable advisory opinion, No. 16-05 [PDF], regarding an agreement between a Medicare Supplemental Health Insurance (Medigap) insurer and a preferred hospital network.

Under the proposed arrangement, (1) the Medigap insurer would indirectly contract with hospitals (Network Hospitals), through a preferred hospital organization (PHO), to provide discounts of up to 100 percent on Medicare Part A inpatient hospital deductibles incurred by the Medigap policyholders; (2) the Medigap insurer would pay the PHO a fee for administrative services for every discount received under the arrangement; and (3) policyholders who had an inpatient stay at a Network Hospital would receive a $100 premium credit. Although the OIG determined that the proposed arrangement could potentially implicate both the anti-kickback statute and the civil monetary penalty against inducements to beneficiaries (CMP), it concluded it would not impose any administrative sanctions.

Similar to its previous advisory opinions on the issue, the OIG found that the proposed arrangement did not qualify for safe harbor protection for waiver of cost-sharing or for reduced payment premium amounts under the anti-kickback statute. Nevertheless, the OIG determined that the proposed arrangement presented a minimal risk of fraud and abuse because (1) it would not affect per-service Medicare payments; (2) it would be unlikely to increase utilization because the benefits would be invisible to beneficiaries – the cost-sharing would be covered by insurance in any event; (3) the PHO network is open to all willing accredited, Medicare-certified hospitals that meet applicable state law requirements; (4) medical judgment would be unaffected because no remuneration is provided to doctors; and (5) policyholders retain the freedom to choose any hospital and would not incur a penalty for choosing a non-network hospital, as the Medigap plan would cover the deductible in any case, as required under the plan.

With regard to the CMP for beneficiary inducement, the OIG determined that the premium credits offered to policyholders would be offered to induce them to select a Network Provider – an inducement that falls within the CMP's prohibition. However, the OIG concluded that an exception allowing differentials in deductibles and cost-sharing as part of a benefit plan design, while not directly applicable here, would apply sufficiently by analogy to reduce the risk that beneficiaries would be unduly influenced by the described benefit. Further, the OIG determined that the arrangement, which would be reported to state insurance rate-setting agencies, could lead to savings that would reduce costs for all plan members, regardless of whether they had qualifying hospital stays.

For additional analysis of previous OIG advisory opinions on similar arrangements, see Ober|Kaler's analyses of OIG advisory opinions 16-03 and 16-04.