

PUBLICATION

Again, the OIG Approves a Medigap Policy Contract with Preferred Hospital Networks [Ober|Kaler]

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On June 12, 2015, the U.S. Department of Health & Human Services, Office of Inspector General (OIG) issued [Advisory Opinion 15-08](#). This opinion continues the well-established pattern of favorable advisory opinions which approve Medicare Supplemental Health Insurance (Medigap) insurers' use of preferred hospital networks (PHOs). The OIG's analysis and approval in this opinion echoes its previous opinions – the Medigap insurer's proposal to indirectly contract with a PHO for discounts on inpatient deductibles presents a sufficiently low risk of fraud or abuse that the OIG would not impose administrative sanctions under the antikickback statute (AKS) or the civil monetary penalties (CMP) law prohibiting beneficiary inducement.

For Medigap policies (excluding Medicare SELECT plans), the requestor proposed to contract with a PHO for up to 100 percent discounts on Medicare Part A inpatient hospital deductibles from member hospitals incurred by Medigap plan policyholders. In return, the requestor would pay the PHO an administrative fee for each time it receives a discount from a member hospital. The requestor would share a portion of the resulting savings with policyholders who experienced an inpatient stay at a member hospital, in the form of a \$100 premium credit. Notably, the requestor would pay the full Part A hospital deductible when policy holders are admitted to non-member hospitals. Finally, the requestor would reflect the savings realized through the proposed arrangement in its annual experience exhibits filed with state insurance departments.

The OIG acknowledged that the proposed arrangement implicates both the CMP law and the AKS, but found that it presents a low risk of fraud and abuse under both laws. When analyzing the proposed arrangement under the AKS, the OIG concluded that it did not qualify for any safe harbor protections, but highlighted the following factors when deciding the arrangement presented a low risk of fraud and abuse:

1. Part A payments would be fixed – neither the discounts nor the premium credits would affect per-service Medicare payments.
2. The discounts are invisible to policyholders, making them unlikely to increase utilization.
3. The PHO would not unfairly affect competition because it would be open to qualified hospitals.
4. The professional medical judgment of physicians would not be impacted because they do not receive remuneration.
5. The requestor would make clear to policyholders that they retain the freedom of choice to receive care at any hospital without incurring additional expenses.

In its corresponding analysis under the CMP Law, the OIG found that the premium credit functioned like a permissible differential in coinsurance or deductible amount. The OIG concluded that the premium credit has substantially the same purpose and effect as the differential and therefore presented a low risk of fraud and abuse.