

PUBLICATION

May Providers Pay Health Insurance Premiums for HealthCare.gov Plan Enrollees?

November 08, 2013

Following last week's declaration that Qualified Health Plans (QHPs) on HealthCare.gov are not "Federal health care programs," and thus are not subject to the federal Anti-Kickback Statute, CMS [released additional guidance](#) this week on providers paying premium subsidies and other cost-sharing amounts. In this week's guidance, HHS stated that it has "significant concerns with this practice because it could skew the insurance risk pool and create an unlevel field in the Marketplaces." Further, HHS stated that it "discourages this practice" and encourages health insurance plans participating in HealthCare.gov to "reject such third party payments." The agency concluded that it would monitor the practice and take "appropriate action," if necessary.

Despite HHS's discouragement of providers paying QHP premiums and other support, the agency did not say that this practice is illegal. Certain providers have offered assistance programs to patients through direct and indirect channels for many years. Notwithstanding this week's warning from the agency, many providers are moving forward with plans for QHP assistance programs. If structured properly, these programs can address the issues about which HHS is concerned and promote efficiency in the marketplace. However, they remain controversial given the numerous legal and business issues they present. (For a discussion of some of these issues, read our previous alert [here](#).)

Providers considering premium assistance programs should carefully consider the federal and state laws and policies that could impact these arrangements, as well as the payer relationships that could be affected. Baker Donelson attorneys are working with providers across the country to structure subsidy programs in compliance with federal and state guidance – which will almost certainly continue to evolve.

If you have questions about implementing a subsidy program for health plans purchased on HealthCare.gov, please contact the Baker Donelson attorney with whom you regularly work, or any of the attorneys in the Firm's Health Law group.