

PUBLICATION

CMS Solicits Gainsharing Comments

December 29, 2008

On October 30, 2008 CMS posted the 2009 Physician Fee Schedule Final Rule. The rule was published in the Federal Register on November 19, 2008. CMS did not finalize the Gainsharing Incentive Payments and Shared Savings Program exceptions for hospital-physician arrangements under the Physician Self Referral Act (the Stark law) but instead extended the comment period another 90 days, to February 16, 2009, and requested specific and detailed comments with practical examples on 55 subject areas, as well as general comments on any issues relevant to the incentive payments and shared savings programs exceptions.

Department of Health and Human Services Office of Inspector General (the "OIG") has issued 14 Gainsharing Advisory Opinions to date. The latest, Advisory Opinion 08-21, issued on November 25, 2008, involved an acute care hospital offering cardiac catheterization procedures with four cardiology groups participating in gainsharing involving 23 cost savings measures.

CMS is interested in comments on recommended combinations of conditions or models for the exceptions that would provide "sufficient flexibility to encourage development and implementation" of these programs but adherence to the "no risk" of program or patient abuse standard. CMS encouraged comments on any alternative strategies that would achieve the goals of transparency and accountability; ensure quality, cost effective care to beneficiaries; and prevent disguised payments for referrals.

The Incentive Payments and Shared Savings Program discussion in the Physician Fee Schedule Final Rule can be found at 73 Federal Register 67925-70238 (November 19, 2008) pp. 69793-69798.