

PUBLICATION

OIG Approves Another Medigap/Preferred Hospital Network in Advisory Opinion 16-04 [Ober|Kaler]

2016: Issue 7

On April 18th, the OIG issued a new favorable Advisory Opinion, No. 16–04, regarding an agreement between a Medigap insurer and preferred hospital network. The opinion tracked other, similar opinions in favorably addressing preferred network arrangements.

Under the Proposed Arrangement, a group of three related issuers of Medigap plans contracted with a preferred hospital organization (PHO), which in turn contracted with a national network of participating hospitals open to any willing, qualifying provider. Under the contract, the PHO hospitals would waive Part A inpatient deductibles for plan members. The insurers would pay an administrative fee to the PHO for each qualifying stay. A beneficiary with a qualifying hospital stay could receive a \$100 premium discount upon renewal of the Medigap plan. OIG determined that the Proposed Arrangement implicated both the anti-kickback statute and the civil monetary penalty (CMP) for beneficiary inducement.

OIG found that the 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, OIG determined that the arrangement presented a minimal risk of fraud and abuse because (i) it would not affect per-service Medicare payments; (ii) 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; (iii) the PHO network is open to all willing providers; (iv) medical judgment would be unaffected because no remuneration is provided to doctors; and (v) beneficiaries would not incur a penalty for choosing a non-network hospital.

With regard to the CMP for beneficiary inducement, OIG determined that an exception allowing differentials in deductibles and cost sharing as part of plan design for health insurance plans, 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, OIG determined that the arrangement, which would be reported to state insurance rate setting agencies, could lead to savings that would reduce charges for all plan members, regardless of whether they had qualifying hospital stays.