OIG Issues Favorable Advisory Opinion Regarding Medigap Insurers Contracting with Preferred Hospital Networks to Discount Inpatient Deductibles

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On June 14, 2018, the Office of the Inspector General (OIG) issued an advisory opinion[1] regarding a proposed contractual arrangement between offerors of Medicare Supplemental Health Insurance policies, commonly referred to as Medigap, and a preferred hospital network. Under the proposed arrangement, the network hospitals would agree to discount their Medigap policyholders' Medicare Part A inpatient deductibles. Policyholders, in turn, would receive premium credits in connection with the discounts. The OIG indicated that the proposed arrangement would implicate the federal anti-kickback statute and that the proposed premium credits would also implicate the prohibition on inducements to beneficiaries under federal civil monetary penalty law. But the OIG determined that the risk of fraud and abuse was sufficiently low that it would not impose administrative sanctions in connection with the proposed arrangement.

The "Requestors" of the advisory opinion were licensed offerors of Medigap policies. The Requestors proposed to enter into an arrangement with a preferred hospital organization (PHO) that contracts with hospitals throughout the country ("Network Hospitals"). Under this arrangement, the Network Hospitals would agree to discount Medigap policyholders' Part A inpatient hospital deductibles up to 100 percent, for which the Requestors would otherwise be liable under the Medigap plan. The PHO would be open to any accredited, Medicare-certified hospital that contractually agrees to discount all or a portion of the Part A deducible for policyholders and comply with applicable state and federal laws.

Also, Requestors that receive a discount from a Network Hospital would pay the PHO an administrative services fee and pass back some of the financial benefits, in the form of a $100 credit, to the policyholder who had the inpatient stay at the Network Hospital. This credit would then be applied towards the policyholder's next renewal premium. The Requestors would report their savings under the arrangement in their annual experience exhibits filed with their respective state insurance departments that regulate the premium rates charged by Medigap insurers.

Requestors would pay the entire Part A inpatient deductible for policyholders that are admitted to hospitals other than a Network Hospital. The policyholders' liability for covered services, whether performed by a Network Hospital or any other hospital, would not be impacted under the proposed arrangement. Medigap policyholders would be provided with notice of the policy, current information on Network Hospitals, and clear assurances that the policy would not change policyholders' liability for costs covered under their Medigap plan and that they would not be penalized for using hospitals other than the Network Hospitals.

The OIG acknowledged that the proposed arrangement, including the premium credits passed back to the policyholders, would implicate the anti-kickback statute and the civil monetary penalty prohibition on inducements to beneficiaries. But the OIG stated the following in concluding that the proposed arrangement would present a low risk of fraud and abuse:

- **First**, neither the discounts not the premium credits would increase or affect per-service Medicare payments. With the exception of certain pass-through payments and outlier payments, Part A payments for inpatient services are fixed; they are not affected by beneficiary cost-sharing.

1 OIG Advisory Opinion No. 18-04, available at https://oig.hhs.gov/fraud/docs/advisoryopinions/2018/AdvOpn18-04.pdf.

- **Second**, the Proposed Arrangement would be unlikely to increase utilization. In particular, the discounts effectively would be invisible to Policyholders because they would apply only to the portion of the individual's cost-sharing obligations that his or her supplemental insurance otherwise would cover. In addition, [the OIG has] long held that the waiver of fees for inpatient services is unlikely to result in significant increases in utilization.

- **Third**, the Proposed Arrangement should not unfairly affect competition among hospitals because membership in the PHO's hospital network would be open to any accredited, Medicare-certified hospital that meets the requirements of applicable state laws.

- **Fourth**, the Proposed Arrangement would be unlikely to affect professional medical judgment because Policyholders' physicians and surgeons would receive no remuneration, and Policyholders would remain free to go to any hospital without incurring any additional out-of-pocket expense for their inpatient hospital stay.

- **Fifth**, the Proposed Arrangement would operate transparently, as Requestors certified that they would clearly inform Policyholders of their freedom to choose any hospital without incurring additional liability or a penalty.

For more information, please click here.

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