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ALERTS

HHS-OIG Declines Sanctions On Medicare Supplemental Insurance Incentives For Use Of Network Hospitals

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Highlights

HHS-OIG released a favorable opinion on a Medicare Supplemental Insurance Plan's desire to incentivize patients' use of network hospitals by offering discounted inpatient deductibles and premium credits

The agency noted that incentives related to inpatient deductibles present a lower risk of overutilization since patients generally do not control whether they are admitted as an inpatient

The agency determined little risk for fraud and abuse as overutilization or increased costs to federal health programs are unlikely

On Dec. 18, 2023, the U.S. Department of Health and Human Services' Office of Inspector General (HHS-OIG) released Advisory Opinion No. 23-09, a favorable opinion regarding a proposed arrangement by which a Medicare Supplemental Health Insurance Plan (Medigap) would incentivize its policyholders to use specific hospitals within a preferred hospital organization (PHO) for inpatient care. Despite implicating both

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the federal Anti-Kickback Statute (AKS) and the beneficiary inducement civil monetary penalty (CMP) rules, the agency determined it would not impose sanctions.

Background: Discounts on Deductibles and Premium Credits

Individuals enrolled in Medicare who require an inpatient hospital stay incur a Medicare Part A deductible. Among other things, Medigap provides additional insurance to assist in this deductible's coverage. Under the proposed arrangement reviewed by the HHS-OIG, Medigap policyholders who have an inpatient stay at a hospital in the PHO network would be eligible for a discount on the Part A deductible. Each network hospital would provide a discount that is: 1) established in advance; 2) pursuant to written agreement between the PHO and each of its network hospitals; 3) documented in an agreement between the PHO and Medigap; and 4) not varied based on volume or value of policyholder claims. However, depending on the hospital, the discount could be as high as 100 percent.

Further, Medigap would offer a $100 premium credit to each policyholder who utilizes a network hospital for their Medicare Part A-covered inpatient hospital stay. The premium credit would be applied to the policyholder's next Medigap premium payment.

Policyholders could only receive one $100 premium credit per Medicare Part A-covered benefit period, which starts with the first day on which a beneficiary receives inpatient hospital care and ends after 60 consecutive days during which the beneficiary was not an inpatient. At most, there could be up to five such benefit periods in a year. Neither the discount nor the premium credit would be advertised, but policyholders would receive information after enrollment.

HHS-OIG Agency's Analysis of the Incentives

The HHS-OIG determined that those two streams of remuneration would implicate both the AKS and the CMP rules as potentially influencing: 1) prospective enrollees to select a specific Medigap plan, 2) existing policyholders to re-enroll in Medigap, and 3) policyholders to select an in-network hospital as their care provider. However, without the requisite intent, the HHS-OIG concluded the discounted deductible and premium credit pose a low risk of fraud and abuse.

First, the agency said, it is unlikely the remuneration would result in overutilization of healthcare items or services or pose a risk of increased costs to federal healthcare programs. It is in the Medigap's financial interest to ensure appropriate utilization and cost, so it is unlikely it would use either mechanism of remuneration to promote overutilization. Further, the premium credit would not improperly induce policyholders towards inpatient stays. Patients generally cannot control whether or not they are admitted as an inpatient as this is a clinical decision.

Second, there is little risk for potential patient harm. The hospital's deductible discount would apply universally to all policyholders and would not be limited by discriminatory eligibility criteria. Patient choice also would not be impacted as patients could choose to receive care at any

hospital outside the PHO without financial penalty to their deductible or premium payments.

Third, neither form of remuneration would affect competition. Since Medigap would not advertise the proposed arrangement, it is unlikely to impact competition between insurers. While it is possible that policyholders would re-enroll due to the benefits of the proposed arrangement, the risk is mitigated by the fact that policyholders may only receive the premium credit under limited circumstances. They must require an inpatient stay and select a network hospital. As far as competition among inpatient providers, policyholders would continue to be able to select any hospital without negative financial consequence to their deductible or premiums.

Administrative Fee

Under the proposed arrangement, Medigap would also pay an administrative fee to the PHO as compensation for establishing the hospital network and arranging for the network hospitals to discount Medicare Part A inpatient deductibles. The monthly fee would be pursuant to a written agreement. The fee would be a percentage of the aggregate savings that Medigap would realize from the network hospitals' discounts on policyholders' Medicare Part A-covered inpatient stays.

As such, the fee would vary by the number of policyholder claims for which network hospitals provided a discount and the amount of discount provided. Still, the administrative fee would be at fair market value, and Medigap would not shift the cost of the fee to any federal healthcare program.

The HHS-OIG determined that the administrative fee would implicate the AKS. However, based on the totality of facts and circumstances, the administrative fee represents a low risk for fraud and abuse. The agency explained that the methodology used to calculate the administrative fee, based on aggregate savings, would likely not drive overutilization or increased costs to any federal healthcare program. Also, it is in Medigap's best interest to decrease overutilization. As such, while the fee implicates the AKS, the HHS-OIG would decline to impose sanctions.

Key Takeaways

The HHS-OIG continues to show leniency toward arrangements that would not improperly promote federal healthcare program overutilization or costs. The agency emphasized that Medigap, by virtue of being an insurer, earns no benefit from driving overutilization or increasing its costs.

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