OIG Issues Favorable Advisory Opinion Regarding Discounts between Medigap and PHO's



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On February 26, 2024, the Office of Inspector General (OIG) issued Advisory Opinion 24-01, approving the use of a discount as part of an arrangement between a Medicare Supplement (Medigap) plan offered by a private insurance company and a preferred hospital organization (PHO) as part of a "preferred network" of hospitals. Under the proposed arrangement, the PHO would provide discounts on the otherwise-applicable Medicare Part A inpatient deductibles for the Medigap plan's policyholders and, in turn, the Medigap insurer would provide a premium credit of $100 off the next renewal premium to those policyholders who use a network hospital within the PHO's network for an inpatient stay The discount offered by the PHO would be established in advance pursuant to a written agreement, and the premium credit offered by the Medigap insurer would not be in the form of a check, deposit, or other affirmative payment to the policyholder. Additionally the Medigap plan would pay the PHO a percentage based administrative fee, based off the aggregate savings of the policyholders and consistent with fair market value, for PHO's efforts in maintaining the network of hospitals.

The OIG concluded that while the proposed arrangement could generate prohibited remuneration under the federal Anti-Kickback Statute, the OIG would not impose administrative sanctions in this case because the arrangement would be unlikely to increase costs for federal healthcare programs, is unlikely to lead to inappropriate utilization of healthcare services, and would be unlikely to impact competition or patient choice. This marks the fifth time since December 18, 2023, that the OIG has issued a nearly identical opinion on the issue of PHO discounts for Medigap policyholders. Specifically, all 5 OIG opinions allowed a Medigap insurance company contracting with the PHO to provide discounts on the otherwise-applicable Medicare Part A inpatient deductibles for policyholders and, in turn, allowed the Medigap insurer to provide a premium credit of $100 off the next renewal premium to those policyholders who used a network hospital within the PHO's network for an inpatient stay. According to the

OIG, five separate Advisory Opinions were issued because there were multiple parties to the fact pattern and each requested an Advisory Opinion specific to that party.

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