OIG Permits Consultant to Implement a Referral Program that Generates Physician Practice Business



2/28/2024

On December 28, 2023, the U.S. Department of Health and Human Services Office of Inspector General, (OIG) issued Advisory Opinion No. 23-15 approving a proposed arrangement where a consultant would pay a referral fee to its physician practice clients if they recommend the consultant to other physician practices.

Under the proposed arrangement, the consultant provides practice optimization services to physician practice clients in exchange for a service fee. The consultant will offer these physician practice clients a $25 gift card if they recommend the consultant's services to other physician practices and an additional $50 gift card if the recommendation results in a new physician practice retaining the consultant.

The OIG analyzed this arrangement based on three remuneration streams:

1. Gift cards provided to physician practice clients who recommend the consultant's services to other physician practices. The OIG determined that these gift cards are not given in exchange for referrals, purchases, arrangements, or recommendations of any item or service reimbursable by Federal health care programs.

2. The service fee paid by the physician practice clients to the consultant. The OIG noted that the consultant agreed not to recommend to any client the purchasing, leasing, or ordering of any item or service reimbursable by Federal health care programs.

3. Higher reimbursements under Medicare's Merit-Based Incentive Payment System to physician practice clients due to

consultant services. The OIG found that, although these services might result in increased reimbursement, any remuneration clients may receive is not in exchange for referrals, purchases, arrangements, or recommendations of any item or service reimbursable by Federal health care programs.

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