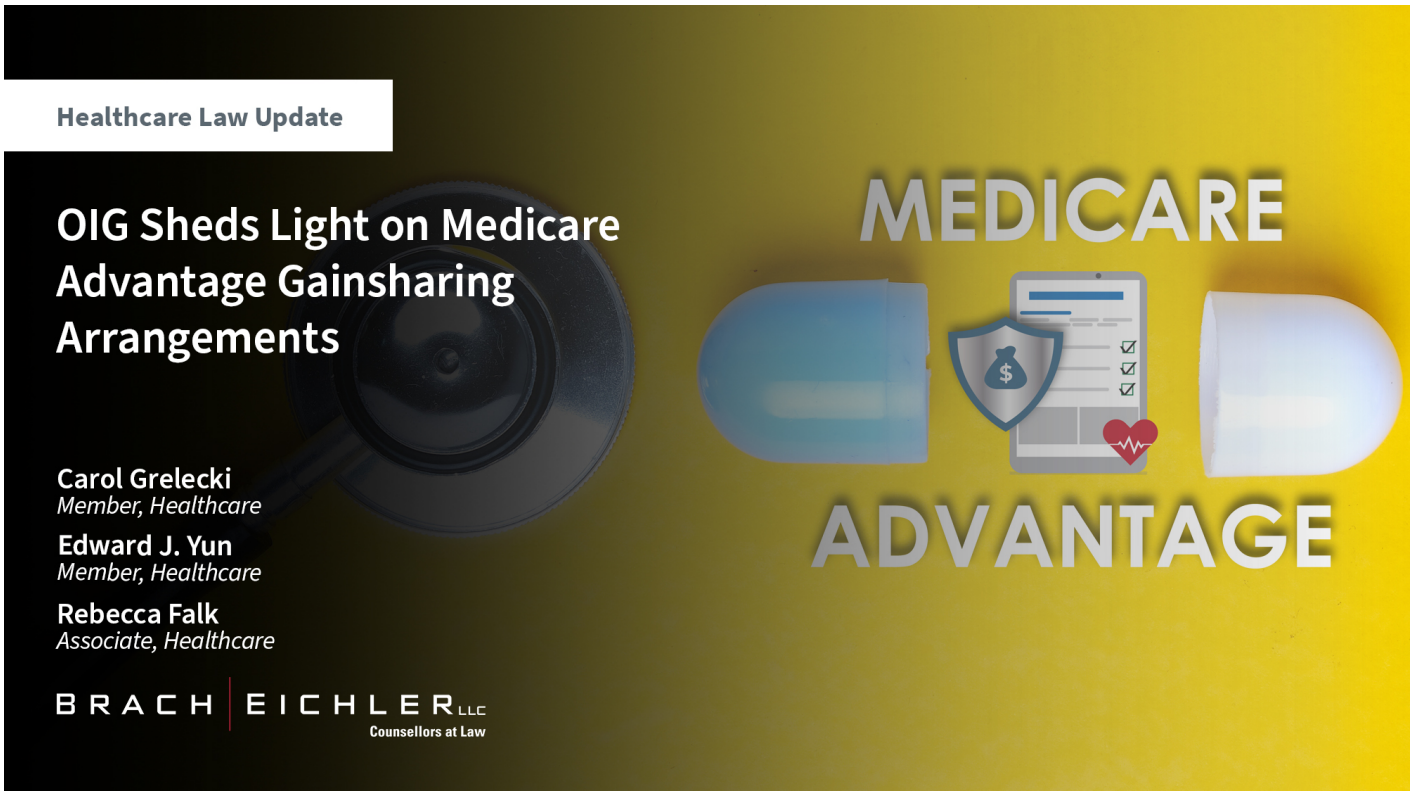
OIG Sheds Light on Medicare Advantage Gainsharing Arrangements



10/31/2024

On September 13, 2024, the Department of Health and Human Services Office of Inspector General (OIG) issued an unfavorable Advisory Opinion in response to a Medicare Advantage Organization (MAO) seeking to share its savings (the Gainshare Payment) with group health plans that contract to participate in the MAO's Employer Group Waiver Plans (EGWPs).

In its proposed arrangement, the MAO sought to make available a Gainshare Payment to groups that reach a negotiated medical loss ratio, calculated by dividing certain expenses incurred by the MAO by certain revenues it receives. Groups would be able to use the Gainshare Payments for any purpose, unlike other MA plans which require participating groups to use rebates to pay for supplemental benefits or reduce enrollees' premiums. The proposed arrangement would allow the MAO to unilaterally terminate or modify the Gainshare Payment percentage amount if the number of enrollees falls below a negotiated threshold.

The OIG concluded that the proposed arrangement would implicate the Federal anti-kickback statute, and that risk of fraud and abuse was not sufficiently low, for the following reasons:

1. The Gainshare Payment could incentivize groups to choose the requestor's EGWP over similar plans that are unwilling or unable to provide a similar incentive, since the Gainshare Payment may be used for any purpose.

2. Groups that select the requestor's EGWP may steer its members to enroll in the plan to prevent the requestor from reducing or terminating the Gainshare Payment due to low enrollment.

3. Groups selecting a EGWP are not required to negotiate for better benefits or lower costs for enrollees and therefore can engineer its arrangement with the MAO to increase its chance of receiving a larger Gainshare Payment.

Notwithstanding the foregoing, the OIG stated that a savings-sharing arrangement between MAOs offering a EGWP and group health plans could be permissible if structured differently than the proposed arrangement.

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For more information, contact:
Carol Grelecki | 973.403.3140 | cgrelecki@bracheichler.com
Edward J. Yun | 973.364.5229 | eyun@bracheichler.com
Rebecca Falk | 973.364.8393 | rfalk@bracheichler.com

Authors

The following attorneys contributed to this insight.



Carol Grelecki

Member
Healthcare Law

973.403.3140 · 973.618.5540 Fax

cgrelecki@bracheichler.com



Edward J. Yun

Member
Healthcare Law

973.364.5229 · 973.618.5589 Fax

eyun@bracheichler.com



Rebecca T. Falk

Associate
Healthcare Law

973-364-8393 · 973-618-5923 Fax

rfalk@bracheichler.com