**Advisory Opinions**

**OIG Again Says No Sanctions for Proposed Medigap Discounts**

**By James Swann**

May 5 — For the eighth time in the past 12 months, the government has decided not to impose administrative sanctions on an insurer's proposed arrangement to provide deductible discounts to Medigap policyholders who use certain hospitals, according to an advisory opinion released May 4.

The Department of Health and Human Services Office of Inspector General said the proposed arrangement presented a low risk of fraud and abuse under both the anti-kickback statute and the civil monetary penalties law.

Under the arrangement, the insurer would participate in a preferred hospital organization (PHO), and the hospitals would offer discounts of up to 100 percent on Medicare inpatient deductibles incurred by the Medigap policyholders, costs that would otherwise be paid by the insurer.

**Regular Medigap Practice**

Richard Westling, an attorney with Waller Lansden Dortch & Davis LLP in Nashville, Tenn., told Bloomberg BNA May 5 that the series of OIG advisory opinions suggests that the deductible discount arrangement is likely to become a regular practice in the Medigap insurance market.

"It also signals the OIG's support of health insurers’ creative cost savings strategies, even those that monetarily incentivize patient behavior, so long as those strategies don't increase Medicare service costs, drive increasing utilization, impact physicians' medical judgment or create unfair competition between hospitals," Westling said.

Westling said the advisory opinions are an indication that the OIG is sensitive to the pressures on insurers to bring down health-care costs, as well as an understanding that doing this through a strategic alignment with providers is possible without violating the anti-kickback statute.

**Legal Analysis**

After reviewing the proposal, the OIG advisory opinion (No. 16-05) determined that the discounts wouldn't increase Medicare payments or drive up utilization, as the discounts would only affect costs that would ordinarily be paid by the insurer.

Additionally, the OIG said the arrangement wouldn't hamper competition, as any hospital would be free to participate in the PHO, and wouldn't affect physician judgment, as no payments would be made to physicians.

As a bonus, the OIG said, the proposal could lead to lower costs for all Medigap policyholders, as any cost savings from the arrangement would be reported to the state insurance rate-setting regulator.

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**For More Information**

The OIG advisory opinion is at http://oig.hhs.gov/fraud/docs/advisoryopinions/2016/AdvOpn16-05.pdf.