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Coupon Arrangement for Health Care Services Approved by OIG

By Stuart J. Vogelsmeier

As health care providers seek new avenues to market to prospective patients, certain ideas that have been used in the consumer product world are being considered. In Advisory Opinion 12-02, the Office of Inspector General ("OIG") approved an arrangement under which a website would display coupons and other advertising from health care providers and suppliers.

Under this Advisory Opinion, the entity operating the website (the "Operator") approached health care providers to post coupons for health care services and items on the website. Coupons could include discounts reimbursable by Medicare/Medicaid. Providers would be prohibited from offering "free services". Providers would be charged a set fee for the ability to advertise. Providers would also be required to give the same discount to any third party payor including Medicare/Medicaid.

The OIG analyzed the arrangement under both the Anti-Kickback statute and the Civil Monetary Penalties ("CMP") provision. The OIG first reviewed general factors related to marketing and advertising arrangements. Those factors include the identity of the parties involved in the arrangement, the parties' relationship to the target population of the advertising, the nature of the advertising and marketing, the item or service being marketed or advertised, and the safeguards of the particular arrangement.

The OIG concluded that the proposed arrangement presented a low risk of violating the Anti-Kickback statute and CMP provisions for a variety of reasons:

1. The Operator was not a health care provider. Arrangements involving people (such as health care providers) with an ability to influence health care decisions of patients are given closer scrutiny.

2. The fees charged by the Operator to the health care providers are set in advance, and consistent with fair market value for the purchase of advertising space. The fees would not take into account the use of the coupons or the number of consumers who ultimately obtain services from the providers who post coupons.

3. The advertisements regarding the health care services on the website would take the form of banner or pop-up advertisements. Only consumers who choose to register with the site would receive additional information.

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4. The structure of the coupons decreased the risk of over-utilization. The OIG felt that "pre-paid" coupons under which the patient pays for Service X and walks into the provider's office asking for Service X, may cause the offering provider to feel pressured into rendering Service X even if it was not medically necessary. In contrast, the coupons in the proposed arrangement do not require upfront investment by the consumer. Therefore, the provider's medical judgment would be less likely to render medically unnecessary or inappropriate services.

Additionally, the OIG stated that the content of the coupons and the other safeguards mitigated the risk of improper inducements:

1. The discount would also be passed to the payor, including Medicare/Medicaid. Thus, Federal health care programs also benefited. Also, the patient's cost-sharing obligations (such ac co-payments or deductibles) would not be entirely waived.

2. The disclosures to the consumers would inform consumers that the discount applied to the entire service, not just to the co-payment or deductible.

In conclusion, the OIG concluded that the Operator was more of a general conduit for advertising, rather than a party who was providing remuneration to a patient to influence the choice of a particular provider.

Advisory Opinions are only issued to the requesting parties. Providers cannot rely on Advisory Opinions if they are not the requesting parties, but they can glean OIG policy from these Opinions. Providers contemplating offering coupons for health care services that might be reimbursable by Medicare/Medicaid should consult attorneys and carefully analyze the potential risks. The key facts in Advisory Opinion 12-02 were that the discount was also passed on to the third party payor, including Medicare/Medicaid, and the patient's co-pay/deductible was not entirely waived.

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