

Publications

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The OIG's Concerns with Potentially Fraudulent Medicare Advantage Marketing

The HHS Office of Inspector General (“OIG”) released a Special Fraud Alert to inform health care professionals (“providers”) and Medicare Advantage Organizations (“MAOs”) about the OIG’s view of potentially abusive marketing practices in the context of the promotion of Medicare Advantage (“MA”) plans. In particular, the OIG is concerned with two types of suspect marketing practices: (1) payments from MAOs to providers or their staff to steer patients to specific MA plans, and (2) payments from providers to MAO brokers to steer MAO enrollees to the providers.

Under the first concern, the OIG warned against MAOs paying remuneration to providers or their staff in exchange for referring patients to the MAO’s plans. The OIG acknowledges that regulations allow providers to engage in limited forms of marketing and communications related functions on behalf of a MAO, but the providers cannot accept compensation (such as gift cards or in-kind payments) for those marketing efforts.

Under the second concern, the OIG warned against providers paying MAOs (or their brokers) in exchange for the MAO directing its enrollees to the provider. OIG is concerned that, because MA brokers have established relationships with Medicare enrollees, the brokers may be positioned to influence those enrollees’ provider selections while benefiting economically from those financial arrangements with providers. Adding to the OIG’s concern is that the enrollees are unaware of these financial relationships.

According to the OIG, the identified marketing schemes can harm enrollees in two principal ways. First, agents, brokers, and providers may skew their guidance when providing recommendations regarding providers or MA plans based on their improper financial self-interest. In particular, when payments inappropriately steer recommendations, Medicare enrollees may find themselves switched to or enrolled in MA plans where they are unable to access their preferred providers, are unable to meet their health care needs, and pay higher out-of-pocket costs. Second, the OIG is concerned with the anticompetitive effects of these marketing schemes. They could encourage agents, brokers, and providers to direct enrollees to larger MAOs or certain providers who can afford to make marketing scheme payments. Additionally, a MAO may use payments made to providers or their staff to selectively target individuals for enrollment who are

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expected to increase profits for the MAO, while discouraging individuals to enroll who are expected to decrease profits to the MAO.

The most useful part of the Special Fraud Alert is its non-exhaustive list of suspect marketing arrangement characteristics. The OIG considers the following payments arrangements between MAOs and providers to present potential compliance risk:

1. Remuneration (such as bonuses or gift cards) is in exchange for referring or recommending patients to a particular MA plan or to a particular provider.
2. Payments disguised as being for legitimate services but are actually to induce the steering of Medicare beneficiaries to a particular MA plan or a particular provider.
3. Compensation for patient information that may be used to market to potential enrollees.
4. Payment amounts that are determined by demographics or the health status of individuals enrolled in a MA plan or assigned to a provider.
5. Payments that vary based on the number of individuals referred for enrollment in a MA plan or the number of enrollees directed to a provider.

We encourage providers to stay on the lookout for these marketing practices and be mindful of the OIG's scrutiny when it comes to payments between providers, MAOs, and other involved parties. Polsinelli is here to answer any questions about risk and compliance.