

OIG Opinion on Gainsharing

Summary

Facts: The opinion concerns an arrangement in which a hospital agreed to share with 4 cardiology groups and 1 radiology group a percentage of the hospital's cost savings arising from the physicians' implementation over 2 years of a number of cost reduction measures in certain cardiac catheterization procedures. In general, the savings were related to the standardization of medical devices and supplies and to curbing the inappropriate use or waste of medical devices and supplies.

Finding: The OIG found that based on the information provided by the requestor and the totality of the facts that:

1. the arrangement could constitute an improper payment to induce reduction or limitation of services pursuant to Sections 1128A(b)(1)-(2) of the Social Security Act; and
2. the arrangement could potentially generate prohibited remuneration under the anti-kickback statute, if the requisite intent to induce or reward referrals of Federal health care program business were present.

The OIG did not impose sanctions on the Requestors as an exercise of their discretion. Additionally, the OIG felt that its decision not to impose sanctions was consistent with its Special Advisory Bulletin on "Gainsharing Arrangements and CMPs for Hospital Payments to Physicians to Reduce or Limit Services to Beneficiaries" (July 1999). The OIG also noted that gainsharing plans can present substantial risks for both patient and program abuse but that those risks were not present in this arrangement. The OIG also felt that this particular program had sufficient safeguards to prevent the risk of anti-kickback abuses.

Notwithstanding this opinion, the OIG has indicated that it is concerned with arrangements between hospitals and physicians to share cost savings. It specifically noted that "Improperly designed or implemented arrangements risk adversely affecting patient care and could be vehicles to disguise payments for referrals."

Here is the link: <http://www.oig.hhs.gov/fraud/docs/advisoryopinions/2008/AdvOpn08-21.2.pdf>