

Part B Insider (Multispecialty) Coding Alert

COMPLIANCE: Don't Take OIG Opinions as License to Go Nuts With Gainsharing

The **HHS Office of Inspector General** has now issued three more opinions approving gainsharing arrangements between hospitals and physicians - but that doesn't mean gainsharing is suddenly OK in the OIG's book.

The OIG had listed gainsharing as a major compliance concern in its hospital compliance guidance, issued last year. Gainsharing refers to deals in which a hospital offers a physician group payments for improving efficiency or cutting costs. The OIG has been skeptical of arrangements that reward physicians for skimping on care, and also involve payments from referral sources to physicians.

The OIG's opinion only applies to the exact circumstances that the hospitals put forward when they requested these opinions, cautions attorney **Judy Waltz** with **Foley & Lardner** in San Francisco. In all three cases, the OIG liked safeguards, such as a cap on the amount of money the physicians could receive, the fact that payments were tied to specified cost-saving measures, and the fact that no individual physician could receive more money directly for reducing costs further.

Not a reversal: The new opinions don't represent a reversal of the OIG's opposition to gainsharing, cautions attorney **Bruce Johnson** with **Faegre & Benson** in Denver. The opinions provide "merely a series of narrowly crafted arrangements that allow for some limited gainsharing." The arrangements are not nearly as broad as the kinds of arrangements that providers were trying a few years ago before the OIG cracked down, he adds.

If you're contemplating a gainsharing arrangement, you don't just have to worry about the OIG - you might also want to talk to your malpractice carrier, advises attorney **Neal Cooper** with **Hall Render** in Indianapolis. Some gainsharing measures contemplated in the OIG opinions, such as delayed cross-matching of blood, could increase the patients' risk. Patients may not be thrilled about waiting an extra 40 minutes for a blood transfusion, he notes.

Another consideration: With so much concern regarding the state of the Medicare trust fund and measures such as pay-for-performance aiming to reward providers for efficiency, the OIG's decision to take a hard-line stance against programs to reward doctors for reducing costs may seem counterproductive, observers speculate.

Tying incentives to improved quality and outcomes is definitely better than tying them to cost savings, Cooper insists. Hospitals may be able to cross-pollinate gainsharing arrangements with their own quality improvement programs.

The future: At some point legislation may loosen the prohibition against gainsharing further than the OIG is able to on its own, Johnson notes.