

## Part B Insider (Multispecialty) Coding Alert

### COMPLIANCE: Hospitals Can Pay Your Physician To Cut Costs

#### But tread carefully to avoid OIG hot buttons

Your physician could receive more money from local hospitals, and help improve patient care in the process.

More and more hospitals are considering gainsharing programs, in which they pay a bonus to physicians for saving them money. The only problem is, these payments could be considered kickbacks or improper financial relationships under federal fraud and abuse laws, say attorneys.

The **HHS Office of Inspector General** has given approval to seven different gainsharing schemes recently (see PBI, Vol. 6, No. 10). But the OIG refused to give a blanket free pass to gainsharing programs in an Oct. 7 hearing of the House Ways & Means Health Subcommittee.

The OIG wants to keep approving programs on a case-by-case basis, Chief Counsel **Lewis Morris** said.

**Good idea:** The OIG has liked programs that reward doctors for cost-saving measures such as limiting the use of certain devices, opening packages only when needed or standardizing products. A good gainsharing program should spell out exactly what the doctor will do to earn the bonus, include quality controls and avoid influencing referrals to the hospital.

So if your doctor is considering accepting payments from the hospital for cutting costs, you should make sure the program is based on improving the quality of care--and avoid cost-cutting that might hurt patients, advises attorney **Neal Cooper** with **Hall Render** in Indianapolis, IN. Any program should be carefully crafted because the OIG is still being cautious, Cooper adds.

**Opportunity:** Cardiologists and orthopedists are most likely to be approached by hospitals with gainsharing proposals, says attorney **Patrick LePine** with **Foley & Lardner** in Detroit. Those specialties have the biggest opportunities for saving money in the hospital because they have a lot of options for using different devices and approaches, he explains.

"Gainsharing is a good idea for physicians if they can get a hospital to buy into it," says LePine. Not only does it save the hospital money, but some studies have shown it can actually improve patient outcomes.

**Caution:** But make sure any program isn't designed to take more money away from Medicare than from private insurers, or the OIG will come down on you, LePine warns.

Health Subcommittee Chair **Nancy Johnson** (R-CT) held the Oct. 7 hearing because she is considering introducing a bill to make it easier to set up gainsharing deals. Sens. **Charles Grassley** (R-IA) and **Max Baucus** (D-MT) have already introduced a bill to set clear rules for gainsharing (see PBI, Vol. 6, No. 20).

**Lesson learned:** For now, gainsharing will be a risky business unless you obtain your own advisory opinion from the OIG, LePine says.