

Part B Insider (Multispecialty) Coding Alert

Compliance: Trying to Save Medicare Money? Be Careful When Sharing Savings

New advisory opinion reiterates the OIG's

You've cut back on your surgical costs, saving Medicare and the hospital a vast amount of money. Now it's time for the hospital to give you a cut of the money you saved, right? Not so fast, the OIG says.

A new advisory opinion, which is the latest in a long line of similar opinions, indicates that physicians should be careful when trying to collect money from hospitals as a reward for saving money on surgical procedures. In many cases, this practice is illegal, so you've got to navigate the regulatory minefield carefully if you're trying to get a cut of the savings.

The scenario: A neurosurgery group and an orthopedic group made an agreement with a local medical center. Under the agreement, the hospital would pay the physicians a share of the cost savings that they generated by making changes to their operating room practices.

For example: The surgeons agreed to limit the use of bone morpho-genic protein (BMP) to an "as-needed basis," based on specific patient criteria. Plus, the physicians decided to standardize the spine fusion devices and supplies that they used.

In return, the hospital agreed to pay the medical practices 50 percent of the cost savings attributable to the techniques that the surgeons implemented to save money for one year.

The problem: The OIG studied the case and said that several aspects of the arrangement violated the Civil Monetary Penalties (CMP) law.

Here's why: The law specifically notes that the government can impose a civil monetary penalty against any hospital that pays a physician as an inducement to reduce services to Medicare patients, says **David C. Harlow, Esq.**, with **The Harlow Group** in Newton, Mass.

The OIG noted its concern that the arrangement "could be used to disguise remuneration from the medical center to reward or induce referrals" from the physicians, the advisory opinion indicated.

"If the physician is being paid to choose a cheaper implant or forego the use of BMP, the government wants to be sure the choice is clinically appropriate," Harlow says.

No penalties: The OIG chose not to crack down on the parties involved in the arrangement, noting, "Although we believe the arrangement might have resulted in illegal remuneration if the requisite intent to induce referrals were present, we will not impose sanctions in the particular circumstances presented here," according to the advisory.

To read the full opinion, go online to <http://www.oig.hhs.gov/fraud/docs/advisoryopinions/2008/AdvOpn08-09B.pdf>.