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OIG Approves Prompt Payment Discount Program for Inpatients and Outpatients

On February 8, 2008, the Department of Health and Human Services Office of Inspector General (OIG) posted an Advisory Opinion (No. 08-03) permitting a health care system (Health System) to offer patients discounts for prompt payment of cost-sharing amounts and amounts owed for non-covered services (Prompt Pay Discount), regardless of the patient's financial status, payor, or ability to pay. The opinion is noteworthy because the Prompt Pay Discount would be offered in connection with both inpatient services, for which an applicable anti-kickback safe harbor exists, and outpatient services, which are not covered by the safe harbor.

The Health System solicited the OIG's opinion regarding whether the provision of Prompt Pay Discounts would constitute prohibited remuneration under the anti-kickback statute or violate the prohibition on beneficiary inducements. The OIG concluded that although the Prompt Pay Discount could potentially generate prohibited remuneration under the statute, it would not impose administrative sanctions or civil monetary penalties under either provision.

The OIG's analysis was two-fold and considered the question of Prompt Pay Discount for inpatient services separately from the Prompt Pay Discount for outpatient services.

With respect to the Prompt Pay Discounts offered for inpatient services, the OIG determined that the Health System would not be subject to administrative sanctions and/or civil monetary penalties because the arrangement fell within the safe harbor for waivers of beneficiary coinsurance and deductible amounts for hospital inpatient services. Specifically, the Prompt Pay Discount was within the safe harbor because the Health System certified that it would adhere to the following safe harbor conditions:

- It would not claim the Prompt Pay Discount as debt or otherwise shift the burden to the Medicare or Medicaid programs, other third-party payors, or individuals

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- The Prompt Pay Discount would be offered by the Health System without regard to the reason for the patient's admission, length of stay, diagnostic-related group, or ambulatory payment classification
- The Prompt Pay Discount would not be part of a price-reduction agreement between the Health System and any third-party payor

With respect to outpatient services (which are not covered by the safe harbor), the OIG determined that the Prompt Pay Discount, as structured, was a legitimate prompt payment incentive rather than a means to induce patients to self-refer. Central to the OIG's analysis were the following elements of the Prompt Pay Discount:

- The Health System did not advertise the Prompt Pay Discount to patients. Instead, patients were notified of the Prompt Pay Discount during the course of the actual billing process.
- Third-party payors would be notified of the Prompt Pay Discount.
- All costs associated with the arrangement would be borne by the Health System.
- The Prompt Pay Discount would be reasonably related to the amount of collection cost that would be avoided.

Based on the foregoing facts, the OIG concluded that the Prompt Pay Discount was unlikely to be used to encourage referrals but rather was implemented for the purpose of improving billing collections. Accordingly, the Health System would not be subject to administrative sanctions and/or civil monetary penalties in implementing the Prompt Pay Discount(s) with respect to outpatients, even though they are not covered by the safe harbor.

The Advisory Opinion provides welcome guidance on a practice that benefits both providers and their patients. The Advisory Opinion is online at: <http://oig.hhs.gov/fraud/docs/advisoryopinions/2008/AdvOpn08-03A.pdf>.