

Office of Inspector General Says Use of Discount Coupons Is Permissible Under Certain Circumstances

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The Office of Inspector General (OIG) posted Advisory Opinion No. 12-02 on March 27, 2012. In this Advisory Opinion, the OIG concluded that providers may post discount coupons on websites for their services and products that patients may download and utilize, so long as appropriate safeguards are in place. The Requestor of the Advisory Opinion proposed to contract with physicians and other providers and suppliers who want to post discount coupons for health care items or services on the Requestor's website. According to the Requestor, coupons may include discounts on items or services that are reimbursable by Federal health care programs; such as Medicare, Medicaid, Medicaid waiver, and TriCare; if they comply with all applicable requirements. Coupons for free items or services are prohibited.

It is also important to note that the Requestor does not make referrals to providers and suppliers who elect to post discount coupons. Providers and suppliers who want to post discount coupons will pay the Requestor a flat fee to do so. Otherwise, there is no financial relationship between the Requestor and providers and suppliers who post coupons.

In its analysis of this proposed arrangement, the OIG first notes that the arrangement involves two activities that may implicate the anti-kickback statute: (1) Selling advertising space on the website to health care providers and suppliers that may bill Federal health care programs and (2) Posting providers' coupons for health care items or services on the website. According to the OIG, the coupons could also implicate the civil monetary penalty provision prohibiting inducements to beneficiaries.

The OIG went on to say that both posting coupons and advertising on the website constitute advertising activities that are clearly meant to induce use of an item or service. In evaluating marketing or advertising, the OIG considers a number of factors, such as the identity of the party engaged in the marketing activity and the party's relationship with its target audience, the nature of the marketing activity, the item or service being marketed, the target population, and any safeguards to prevent fraud and abuse.

The OIG based its conclusion that the proposed activity is of low risk upon the following factors:

- (1) The Requestor is not a health care provider or supplier.
- (2) Payments from providers and advertisers to the Requestor do not depend in any way on customers using the coupon or obtaining services from providers or advertisers.
- (3) Advertising under the proposed arrangement may take the form of banner or pop-up advertisements on a publicly accessible website that are not directed at specific customers visiting the website.
- (4) Coupons on the website are like coupons that consumers receive via the mail. Customers do not pay for the service and have no up-front investment, so the risk is low that providers' or suppliers' judgment would be improperly influenced to render unnecessary or inappropriate services based on customers' possession of coupons.

The OIG also addressed risks associated with the content of coupons and also concluded that the arrangement is of low risk for the following reasons:

- (1) Coupons on the website would be for a reduced price or percentage reduction on particular items or services and discounts would benefit both payors and patients, so that federal health care programs would benefit from reduced costs associated with coupons.
- (2) Terms of Use on the website require providers to comply with the discount safe harbor under the anti-kickback statute.

Based upon the description of the proposed arrangement provided by the Requestor of the Advisory Opinion, the OIG concluded that arrangement does not constitute grounds for imposition of civil monetary penalties. The arrangement also does not trigger administrative sanctions under the federal anti-kickback statute. Unless this type of arrangement is prohibited by state law, therefore, providers may post discount coupons on websites consistent with the OIG's guidance.