# OIG Approves of Hospital-Physician Gainsharing Arrangement, But Details Prove Critical

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A December 2017 Office of Inspector General ("OIG") Advisory Opinion favors a gainsharing arrangement whereby a hospital will share with specific neurosurgeons a percentage of the hospital's cost savings from spinal surgeries performed at the hospital. [1] This Advisory Opinion marks the OIG's first interpretation of the revised Gainsharing Civil Monetary Penalty ("Gainsharing CMP"), which was part of 2015's Medicare Access and CHIP Reauthorization Act ("MACRA"). [2] MACRA clarified that the Gainsharing CMP is violated when payment to a physician is for the purpose of reducing medically necessary services.

Here, the arrangement called for the hospital to share with certain neurosurgeons a percentage of the hospital's savings as a result of cost-reduction measures agreed to by the parties. In addition to other measures, the hospital pays the neurosurgeons a share of savings that result from the neurosurgeons' product selection during spinal fusion surgeries. OIG notes two beneficial important shared-savings payment safeguards: 1) Payment to the neurosurgeons is on a per capita basis, reducing the risk for any one neurosurgeon to generate disproportionate cost savings; and, 2) the neurosurgeons' group operating agreement requires the group, not the individual physicians, to retain a portion of the shared-savings payments for administrative and recruitment expenses, minimizing the likelihood that the compensation would be used to induce or reward referrals from the group's nonparticipating physicians to the hospital. The OIG notes that it may have reached a different conclusion if the shared-savings payments retained by the group were used for anything other than administrative and recruitment expenses.

The arrangement includes additional compliance safeguards, including monitoring and documentation requirements, and certification that any cost-saving measures will not reduce or limit medically necessary services for patients. The arrangement also requires that patients receive written notice of the arrangement and the compensation relationship, including the fact that the neurosurgeons are compensated based on a percentage of the hospital's cost savings. The OIG emphasized the critical nature of these safeguards and the role each played in its favorable Advisory Opinion.

Given MACRA's push towards alternative payment models and value-based reimbursement, this Advisory Opinion is important to providers contemplating physician arrangements aimed at improving patient outcomes and lowering costs of care. While application of this Advisory Opinion is limited to the arrangement at hand, it does provide a blueprint for providers, instructing in tolerable uses of shared-savings payments and arrangement safeguards necessary to compliance.

If you have any questions regarding this Advisory Opinion or shared-savings arrangements, please contact Brian M. Heaton at bheaton@kdlegal.com or your regular Krieg DeVault attorney.

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[1] https://oig.hhs.gov/fraud/docs/advisoryopinions/2017/AdvOpn17-09.pdf.

[2] Medicare Access and CHIP Reauthorization Act of 2015. Pub.L. 114–10. 16 April 2015.