NEWS ALERT

HEALTH CARE

Insight On A Not Uncommon Question: Can Providers Use Gift Cards To Incentivize Patients To Attend Medical Appointments?

By Julia P. Boisvert | January 13, 2021

On December 23, 2020, the U.S. Department of Health and Human Services Office of the Inspector General (the "OIG") issued Advisory Opinion 20-08 which approves of an arrangement proposed by a federally qualified health center (the "FQHC") to offer gift cards to incentivize pediatric patients to attend rescheduled preventative and early intervention care appointments. This advisory opinion offers insight into how the OIG may distinguish acceptable inducements to support care from problematic programs that offer beneficiary inducements merely as an incentive for patients to obtain federally reimbursable items and services.

Proposed Arrangement

As proposed, the FQHC planned to offer a one-time $20 "big-box" store gift card to patients (or their parents or guardians) under the age of 19 who previously missed two or more scheduled preventive and early intervention care appointments within the past six months ("Eligible Patients"). To facilitate this program, the FQHC planned to contact Eligible Patients by phone and notify them of the opportunity to receive the gift card upon rescheduling and attending the appointment and furnish the gift cards to Eligible Patients after their appointments, upon verification of each patient's eligibility. During the appointment, in addition to receiving necessary services, the FQHC planned to educate Eligible Patients regarding the importance of primary care and inform them of their options to facilitate attendance at future appointments.

The FQHC indicated that gift cards would be offered to Eligible Patients regardless of health insurance status or ability to pay and that Eligible Patients would only be eligible to receive one $20 gift card over the course of the proposed arrangement. The FQHC further indicated that it would reevaluate the program on an annual basis to determine whether it is effective in improving the attendance rate for Eligible Patients. If the success rate of the program were to fall below 50%, the FQHC indicated that it would consider modifying or discontinuing the program.

OIG Analysis

The OIG concluded that the proposed arrangement would implicate the Civil Monetary Penalties Law (regarding beneficiary inducement) (the "CMP Law") as well as the Anti-Kickback Statute and that neither the "Promotes Access to Care Exception" nor the "Preventative Care Exception" under the CMP Law applied. Specifically, the "Promotes Access to Care Exception" did not apply because "big-box" store gift cards are considered cash equivalents since they can be used to purchase a wide variety of items.

Regardless, the OIG determined that it would not impose sanctions under the CMP Law or the Anti-Kickback Statute based on the following considerations:

- The pool of Eligible Patients was narrowly defined to include only those who had an established relationship with the FQHC and who had previously scheduled and missed two appointments in the last six months.
- The arrangement was unlikely to increase federal healthcare program costs or lead to overutilization because the services were medically necessary and the arrangement targeted chronic underutilization of preventative and early intervention services.

- The arrangement was unlikely to harm competition because the remuneration was of modest value and could only be furnished once during the proposed arrangement, and the program was only advertised to the defined pool of Eligible Patients.
- The arrangement was reasonably tailored to accomplish the FQHC's goal of improving attendance at appointments. The FQHC relied on internal data to identify a concern and potential solution, focused on a targeted group of patients, paired education, eligibility verification, documentation, and an effectiveness review, and limited the incentive to a one-time reward.

Practical Takeaways

Although the OIG approved the use of "big box" store gift cards in the context of this arrangement, it made clear that the arrangement was narrowly tailored to avoid concerns related to potential fraud and abuse. The OIG also specified that in the context of the CMP Law, these gift cards are considered cash or cash equivalent incentives which are not protected by the exception.

Providers considering the best way to incentivize necessary patient care should think carefully about the structure of any incentive programs and the types of incentives they provide, including offering lower risk alternatives such as items or services that directly promote access to care and which may be protected by an exception. With any patient incentive program, we suggest you seek guidance in developing an appropriate structure.

A copy of the advisory opinion is available here.

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