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OIG Proposes Safe Harbors for Value-Based Care, Changes Mileage Cap

By Nina Youngstrom

Value-based enterprises and patient incentives to “engage” with them would be eligible for protection from some fraud and abuse laws, according to a regulation proposed Oct. 9 by the HHS Office of Inspector General.^[1] It would create new safe harbors under the Anti-Kickback Statute^[2] and revise the civil monetary penalty for beneficiary inducements. OIG also would expand safe harbors on free transportation and electronic health records, according to the proposed regulation, which came in lockstep with CMS’s proposed changes to the Stark regulation.^[3]

“This is a huge, innovative step forward,” says attorney Heidi Sorensen, with Foley & Lardner in Washington, D.C. “There are a lot of practical and interesting things in here, and they are continuing to reach out for guidance from the industry.” However, OIG warns providers not to get ahead of themselves and treat the safe harbors as guidance before they’re final. “They are worried about folks reading the tea leaves,” Sorensen says. Also, she found it disturbing the regulation has some “categorical exclusions by industry.”

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