

SUMMARY STATEMENT

TITLE OF REPORT: Options for Potential Changes to Fraud and Abuse Laws Regarding Gainsharing or Similar Arrangements between Physicians and Hospitals

LEGISLATIVE DUE DATE: April 16, 2016

LEGISLATIVE AUTHORITY: Section 512(b) of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) requires the Secretary of the Department of Health and Human Services to submit, not later than April 16, 2016, a report to Congress with possible approaches for amending certain existing fraud and abuse laws to permit gainsharing or similar arrangements between physicians and hospitals that improve care while reducing waste and increasing efficiency.

SUMMARY OF REPORT: Gainsharing typically refers to an arrangement between entities and individuals that furnish health care services that establishes a formal reward system wherein participants share in cost savings or increased profits resulting from the efforts or actions of the provider receiving the payment. Arrangements similar to gainsharing, which we refer to as “incentive compensation” arrangements, include a diverse set of arrangements that involve payment for performing certain actions or achieving quality, cost, or performance goals, regardless of whether cost savings are achieved.

In this report we present the following possible approaches for the physician self-referral law:

- New statutory exceptions could be added for: (1) compensation paid to physicians under gainsharing arrangements that improve or maintain care while reducing waste and increasing efficiency; (2) incentive compensation arrangements for the provision of services or activities that achieve predetermined, appropriate quality, cost, or performance goals; and/or (3) addressing whether and, if so, how the “volume or value” and “other business generated” standards should apply to gainsharing and similar arrangements that contain appropriate accountability, transparency, and quality protections and do not induce care stinting, premature discharge of patients, or otherwise reduce or limit medically necessary care.
- The Secretary’s authority in section 1877(b)(4) of the Act could be amended to permit regulatory exceptions to the physician self-referral law that pose no undue risk of program or patient abuse. Amending this section of the Act could permit new exceptions to protect referrals for and the provision of designated health services under appropriately structured gainsharing and similar arrangements.

ANTICIPATED REACTION: We expect a positive reaction from the industry and a neutral reaction from the Hill.

CONCLUSION: We recommend that the Secretary approve this Report to Congress.

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