

Blog Post

OIG Weighs In On COVID-19 Vaccination Incentives

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The media has widely reported that several governmental, non-profit, and private organizations, including entities in the healthcare sector, are offering a variety of incentives to encourage more individuals to take the COVID-19 vaccine. While this approach may increase the number of vaccinated individuals, it can also implicate the healthcare fraud and abuse laws when Federal healthcare program beneficiaries, e.g., Medicare participants, receive incentives to roll up their sleeves and get a shot (or two).

Recognizing that some in the healthcare industry would like to offer vaccination incentives and the compliance risks these incentives can pose when Federal healthcare program beneficiaries are involved, the U.S. Department of Health and Human Services Office of Inspector General (OIG) recently issued an [FAQ](#) addressing whether the offer or provision of cash, a cash-equivalent, or in-kind incentives or rewards to Federal healthcare program beneficiaries who receive COVID-19 vaccinations during the public health emergency violates OIG's administrative authorities. In the FAQ, the OIG explains that the risk of OIG enforcement activity varies based on who is offering the incentives and provides safeguards as to how those in the healthcare industry can minimize their compliance risk.

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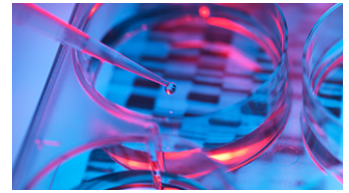
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Healthcare Industry Entities Offering Incentives to Federal Healthcare Program Beneficiaries



Because Federal healthcare programs, including Medicare, reimburse for COVID-19 vaccine administration, offering or providing incentives to Federal healthcare program beneficiaries implicates the Federal anti-kickback statute (AKS) and the Beneficiary Inducements Civil Monetary Penalty (CMP) provision. The FAQ states that healthcare providers, suppliers, or managed care organizations offering an incentive or reward in connection with a beneficiary receiving the COVID-19 vaccine would be sufficiently low risk under the AKS and CMP authorities if the following safeguards are in place:

1. the incentive or reward is furnished in connection with receiving a required dose of a COVID-19 vaccine (which could include either one or two doses, depending on vaccine type);
2. the vaccine is authorized or approved by the Food and Drug Administration as a COVID-19 vaccine and is administered in accordance with all other applicable Federal and state rules and regulations and the conditions for the provider or supplier receiving vaccine supply from the Federal government;
3. the incentive or reward is not tied to or contingent upon any other arrangement or agreement between the entity offering the incentive or reward and the Federal healthcare program beneficiary;
4. the incentive or reward is not conditioned on the recipient's past or anticipated future use of other items or services that are reimbursable, in whole or in part, by Federal healthcare programs;
5. the incentive or reward is offered without taking into account the insurance coverage of the patient (or lack of insurance coverage) unless the incentive or reward is being offered by a managed care organization and eligibility is limited to its enrollees; and

6. the incentive or reward is provided during the COVID-19 public health emergency.

Non-Healthcare Entities Offering Incentives to Federal Healthcare Program Beneficiaries

Further, the OIG states that businesses that are not affiliated with any healthcare industry stakeholder, e.g., restaurants and governmental entities such as local and state health departments that offer incentives to Federal healthcare program beneficiaries for receiving the COVID-19 vaccine present minimal risk under the AKS and, to the extent applicable, the CMP. Provided the offeror of the incentives is not engaged in some other fraud scheme, the OIG would not bring an administrative enforcement action when such non-healthcare entities provide vaccination incentives.

Incentives for Commercially Insured/Uninsured Individuals

Finally, the OIG notes that because the AKS and CMPs relate to items and services for which payment may be made under a Federal healthcare program, it is unlikely that the anti-kickback statute and CMPs would be implicated when vaccination incentives are offered to individuals with commercial insurance or who are uninsured.

Takeaways

To minimize the risk of OIG enforcement activity, healthcare providers, suppliers, and managed care organizations that want to offer rewards to encourage individuals, including Federal health program beneficiaries, to get vaccinated should build into their incentive program the safeguards described above. They should also be mindful that this new guidance is limited to the duration of the COVID-19 public health emergency and plan to revisit any vaccination incentive program when the end of the public health emergency is announced.

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