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Schillerstrom
MONEY - HEALTH CARE
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HOSPITALS

PHYSICIANS

ORTHOPEDIC COSTS

- Legal barriers:
 - Civil monetary penalty re: incentivizing physicians to “reduce or limit” medical services (OIG)
 - Anti-Kickback Law (OIG)
 - Stark Law (CMS)
- OIG Special Advisory Bulletin – July 1999
 - Sharing overall (non-specific) savings with physicians: NO
- OIG Advisory Opinion 01-01
 - Specific, transparent cost savings
 - No effect on quality of care
 - Docs get 50% of savings for Year 1 only (compared to Base Year)

- Medical devices:
 - \$20+ billion market; huge hospital cost center
 - Manufacturers greatly affect physician referrals by direct relationships: consultancies, grants, gratuities, etc.
- Seven OIG Advisory Opinions: 05-01 through 05-06 and 06-22
 - OIG: OK for hospitals to pay physicians to change referral patterns of medical devices (!)
 - OIG: OK to require participating physicians to use “standardized” product, except where medically inappropriate
 - OIG: theory applicable to full range of cardiac devices
- Gives hospitals new and potentially powerful strategy in pricing battles with device manufacturers.

- Primary payout in Year One only
 - OK to share 50% of savings over Base Year
- Clinical equivalence analyses to name “standardized” device(s)
- Complete transparency of process, including patients
- Payout shared equally by participating physicians
- Full selection of devices maintained by hospital
- No rewards for increased volume of procedures
- Severity case mix analysis – no cherry picking

- Question: *One year payout: How will physicians behave in future years?*
 - Multi year payouts possible?
 - May be OK to share 50% of marginal savings in years 2, 3, etc.
 - Reduce physician primary payout to, say 16%, but add Years 2 and 3?
- Question: *How perform clinical equivalence analyses?*
 - Expert opinion on equivalency enough
 - Temporary issue

- Question: *Do you need to seek your own advisory opinion?*
 - Open to challenge: OIG position that gainsharing necessarily violates CMP law
 - Advisory opinion process too long: two years plus

- Question: *Stark Law compliance?*
 - Key issue: are the gainsharing payments at “fair market value” - difficult analysis.
 - No clear answer, absent CMS guidance