

GAINSHARING

Gainsharing refers to the financial arrangement between a hospital and physician where the hospital gives the physician a share of any cost savings generated by the physician's efforts. Following a court decision in April 2004, gainsharing appeared to be on its way to becoming obsolete. However, in early 2005 the Office of the Inspector General issued advisory opinions allowing several gainsharing practices.

An Advisory Opinion is a legal opinion issued to the requestors by the OIG. This opinion lets the requestors know where the OIG stands on an issue and whether the requestors would be subject to prosecution. The opinion is legally binding and protects the requestors, and only the requestors, from OIG sanctions. The opinions issued in 2005 stated that the OIG would not impose any sanctions on the requestors under the Civil Monetary Penalty (CMP) provisions of the Social Security Act. This Act prohibits hospitals from paying physicians to reduce or limit care to Medicare or Medicaid beneficiaries. The opinions also notified the requestors that they would not be sanctioned under Anti-Kickback Statute. This allowed the requestors (a hospital and cardiac surgery groups) to put their cost-sharing arrangement in to effect.

In the Advisory Opinion, the OIG states that the requestors:

“proposed gainsharing arrangements could increase efficiency and reduce waste, but must be scrutinized for (i) stinting on patient care; (ii) “cherry picking” healthy patients and steering sicker (and more costly) patients to hospitals that do not offer such arrangements; (iii) payments in exchange for patient referrals; and (iv) unfair competition among hospitals offering cost savings programs to foster physician loyalty and to attract more referrals”.

In order to prevent prosecution, the OIG insisted that the gainsharing period be limited to 1 year and that payments be made to the physicians' group instead of individually.

The OIG approved three gainsharing practices:

- product substitution
- product standardization
- Use-as-needed/Open-as-needed

With these permitted practices the OIG also implemented safeguards to protect patient healthcare. These safeguards will prevent any fall off in quality of care for patients.