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Provider Notice Policy Clarification

To: PerformCare Provider Network (Substance Abuse Providers, all providers)
From: Scott Daubert, VP Operations
Date: August 19, 2013
Subject: PC-08 Use of Member Incentives in Substance Abuse Treatment

Claims Payment and Clinical Policy Clarification

Question/Issue:

Is the use of Member incentives as a reward for achieving treatment goals in substance abuse treatment permissible by PerformCare in the HealthChoices program?

Source Documentation / References:

Office of Inspector General (OIG) Advisory Opinion No. 08-14
Social Security Act
Federal Anti-Kickback Statute
Civil Monetary Penalties Law

PerformCare Answer/Response:

In accordance with section 1128(D)(b) of the Social Security Act (42 U.S.C. 1320a-7d(b)) and 42 CFR part 1008, the OIG issues advisory opinions about the application of OIG's fraud and abuse authorities to a requesting party's existing or proposed business arrangement. One purpose of the advisory opinion process is to provide meaningful advice on the application of the anti-kickback statute and other OIG sanction statutes in specific factual situations. A review of the OIG Advisory Opinion No 08-14 revealed an analysis that very closely matches the question that was posed. It is provided as an attachment to this memo for provider review and guidance. Member incentives are allowed as a reward for achieving treatment goals in substance abuse treatment. However, the guidance detailed in Advisory Opinion No. 08-14 should be carefully followed and incorporated into provider policy and procedure. In any future review of this situation, PerformCare would rely on Advisory Opinion No. 08-14, unless further state or federal regulatory guidance or statute is issued.

More specifically and as outlined in the OIG opinion, Section 1128A(a)(5) of the Civil Monetary Penalties Act provides for the imposition of civil monetary penalties (CMP) against any person who gives something of value to a Medicare or Medicaid beneficiary that the benefactor knows should

likely influence the beneficiary's selection of a particular provider. The Office of the Inspector General has taken the position that "incentives that are only nominal in value are not prohibited by the statute," and for enforcement purposes, has interpreted nominal value to be no more than \$10 per item, or \$50 in the aggregate on an annual basis. This interpretation can be found in 65 F.R. 24400, 24410-24411 (April 26, 2000) (preamble to the final rule on the CMP).

In accordance with the OIG Advisory Opinion No. 08-14 analysis and conclusion of the implication of the Anti-kickback Statute and Civil Monetary Penalties Law, member incentives of nominal value are allowed as a reward for achieving treatment goals in substance abuse treatment.

It is PerformCare's opinion that providers should not provide member incentives above the nominal value limits set in federal law and the OIG Advisory Opinions. While this question was raised by a substance abuse provider related to incentives in substance abuse treatment, all providers providing or considering incentives should stay within these same nominal value guidelines.