

## OIG Issues Negative Lab Advisory Opinion



Rick L. Hindmand | Thursday, March 26, 2015

Yesterday (March 25), the Office of Inspector General (OIG) of the Department of Health and Human Services posted a negative advisory opinion (Advisory Opinion 15-04) regarding a laboratory's proposal to contract with physician practices to provide all laboratory services for practice patients, regardless of payor, and agree to waive all fees for practice patients who are enrollees of certain insurance plans that require the patients to use a different laboratory, and not to bill those plans.

The OIG cited several reasons for its determination that the arrangement could potentially violate the Medicare/Medicaid anti-kickback statute and result in administrative sanctions, such as exclusion or civil monetary penalties. Even though the physician practices would not receive direct payments under the arrangement, the practices would receive remuneration that could induce referrals by offering convenience and efficiencies of using a single lab and single interface, and by avoiding interface expenses. In addition, the OIG observed that the arrangement could cause inappropriate steering of patients, and that there was no indication of quality or safety improvements that would lower the anti-kickback risk.

Furthermore, the arrangement could result in Medicare and Medicaid charges substantially in excess of usual charges, and could relieve patients and plans of payment obligations in order to generate Federal healthcare program business that could be charged at the full rate.

This advisory opinion provides another reminder of potential legal risks that can arise out of exclusive referral arrangements or agreements to provide services to some patients without collecting patient copays and other fees that may be owed. You can read [Advisory Opinion 15-04](#) in its entirety on the OIG website.



**Rick L. Hindmand**