

## OIG to physicians: Review your financial agreements



Rick L. Hindmand | Wednesday, July 1, 2015

Earlier this month, the Office of Inspector General of the U.S. Department of Health and Human Services (OIG) issued a fraud alert warning physicians of their duty to ensure that their financial arrangements with healthcare companies involve bona fide services and are in line with fair market value.

The OIG also announced it had reached settlements with 12 individual physicians who had entered into questionable medical directorship agreements and office staff arrangements under which an affiliated healthcare entity had paid the salaries of the physicians' staff. The OIG had alleged that under the circumstances the compensation for the medical directorship and the office staff arrangements constituted improper remuneration under the federal anti-kickback statute for the following reasons:

- The payments took into account the volume or value of the physicians' patient referrals;
- The payments did not reflect the fair market value of the physicians' actual services;
- The physicians did not actually provide all the services called for under the agreements; and
- The office staff payments constituted impermissible remuneration to the physicians.

Until recently, the OIG and prosecutors primarily focused their attention on the institution involved in a kickback arrangement. This fraud alert confirms a long-standing prediction that the OIG would start taking action against the physicians involved. It also demonstrates that the OIG will look into a wide variety of arrangements—from very common ones, such as medical directorship agreements, to relatively low-dollar

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arrangements, such as those involving office staff payments.

If you or your physician group has financial arrangements with healthcare entities—such as those involving medical directorships, consulting services, or expense subsidies—you should carefully re-examine those arrangements. Your analysis should include consideration of the federal Stark law, the anti-kickback law, and any comparable state law. Establish a mechanism for the review, and look at your agreements annually at the very least. The following is a checklist for you to use in your review:

- Confirm that each arrangement is set forth in a written agreement signed by you or the physician group and the other entity.
- Confirm that the agreement is up-to-date and reflects exactly what services you are providing and what payment or other remuneration is provided by the other party.
- Confirm that no part of the payments or other consideration takes into consideration the volume or value of referrals.
- Confirm that any payment or other exchange of value reflects fair market value, and that there has been some determination made by a qualified independent third party of that fair market value. The fact that you and the other party have agreed to the payment does not establish that it represents fair market value.
- Confirm that all of the services called for under the agreement are actually being performed.
- Confirm that any documentation of the performance of the services (such as timesheets or logs) are fully and timely completed and maintained.
- Give special attention to agreements such as those involving the payment or reimbursement by another entity of your operating expenses such as personnel costs. Make certain that any such arrangement satisfies the requirements of federal and state fraud and abuse laws and regulations.
- If the underlying agreement has been amended, make certain that the amendment is complied with. For example, if an amendment calls for the completion of a different type of log, make certain that the required log is actually used.

For more information, please contact one of the attorneys listed below.



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