

Latest Office of Inspector General Fraud Alert Signals Heightened Focus on Physician Compensation Arrangements

Article By:

Healthcare Department Barnes Thornburg

The ***Department of Health and Human Services Office of Inspector General*** (OIG) issued a fraud alert June 9, cautioning physicians entering compensation arrangements to scrutinize those arrangements for compliance with fraud and abuse laws. The alert specifically highlights anti-kickback statute liability that may be triggered where “even one purpose of the arrangement is to compensate a physician for his or her past or future referrals of Federal healthcare program business.”

The alert follows a slew of recent settlements between OIG and individual physicians involving questionable medical directorship and office staff arrangements. In the 12 different settlements, OIG alleged improper remuneration under the anti-kickback statute for various reasons, including payments that took into account the volume or value of referrals, compensation above fair market value, and payments for services called for under the arrangement but never actually performed by the physicians. One of the settlements focused on indirect physician compensation, alleging that the payment by an affiliated healthcare entity of front-office staff salaries had the effect of reducing the financial burden on the physicians and thus constituted improper remuneration.

Although the alert does not focus on any new or novel theories of liability, it does signal OIG’s willingness to pursue individual physician liability and serves as a cautionary tale for all physicians to carefully analyze the structure and effect of any existing or potential compensation arrangements.

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