



OIG Reminder: Health Care Compliance Obligations Apply to Physicians and Institutions Alike

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On June 9, 2015, the U.S. Department of Health and Human Services Office of Inspector General (OIG) issued a Fraud Alert focused on compensation arrangements paid to physicians. See, “Physician Compensation Arrangements May Result in Significant Liability” [link:https://oig.hhs.gov/compliance/alerts/guidance/Fraud_Alert_Physician_Compensation_06092015.pdf]. The Fraud Alert focuses on all of the compensation arrangements that may be entered into by and between physicians and health care institutions and brings specific attention to the liability faced by physicians who enter into arrangements that violate the federal Anti-Kickback Statute.

In the Fraud Alert, the OIG brings specific attention to 12 recent settlements with physicians, whose medical director and office staff compensation arrangements, the OIG alleged, were in violation of the Anti-Kickback Statute. The general items of attention include:

- compensation arrangements that allegedly took into consideration the volume or value of the physician’s referrals and were not fair market value;
- arrangements that allegedly included compensation for services never rendered;
- improper remuneration that allegedly included the reimbursement for a physician’s private practice overhead.

The Fraud Alert also reminds providers that an arrangement may violate the antikickback statute where even one purpose of the arrangement is designed to compensate a physician for his/her past or future referrals for federal health care program services. While none of the issues raised under the Fraud Alert are new areas of concern or risk for providers¹, the Fraud Alert does highlight an intentional reminder to physicians by the OIG that arrangements that violate the Anti-Kickback Statute should not be considered risks to institutional providers only. In 2000, the OIG issued its “OIG Compliance Program for Individual and Small Group Physician Practices” (65 Fed Reg. 59434 (October 5, 2000) link: <http://oig.hhs.gov/authorities/docs/physician.pdf>) in which the OIG provided specific guidance for the development and implementation of voluntary compliance programs for physician practices. The Fraud Alert also reminds physician providers of the OIG’s publication “A Roadmap for New Physicians: Avoiding Medicare and Medicaid Fraud and Abuse” (see http://oig.hhs.gov/compliance/physician-education/roadmap_web_version.pdf). While the Roadmap is a fairly fundamental introduction to physician compliance efforts, it should be mandatory reading for all new (and old) physicians—both within private practice and hospital settings.

Apart from reviewing this Fraud Alert, there are some specific steps that physicians and institutional providers should take to address the OIG’s concerns:

1. **Physicians:** Review your practice’s compliance program and/or the OIG’s 2000 model compliance program. Include compliance concerns and ongoing education as part of your practice’s monthly physician meetings. As noted above, the OIG’s Roadmap materials should be included in your compliance materials and distributed to all of your providers.

¹ For example, there are five Special Fraud Alerts issued in 1994 addressing joint ventures, waiver of co-pays and deductibles, hospital incentives to referring physicians, prescription drug marketing practices, and arrangements for the provision of lab services: <https://oig.hhs.gov/fraud/docs/alertsandbulletins/121994.html>.

2. Physicians: Confirm your practice's commitment to compliance with regular training modules for staff and physicians alike. Update your practice's means for collecting anonymous compliance concerns (e.g., a compliance hotline).
3. Physicians: When partnering with other institutional providers (e.g., hospitals), be sure to review the written agreement that is presented to you. Carefully review the terms and conditions of the agreement -- and in particular, your own obligations. Do they seem reasonable, given your current obligations? Are they specific? Do you understand what is being requested of you? Do you have the support staff or other mechanics appropriate to ensure compliance with the agreement? If the arrangement is not in writing, do not proceed further until the parties are able to convene and memorialize the terms, conditions, obligations and payments in writing.
4. Hospitals and Other Institutional Providers: Consider including the Fraud Alert as an educational piece at the outset of discussions with your physician providers. Encourage the physician partners to review the Fraud Alert with their advisors.
5. Hospitals and Other Institutional Providers: Carefully review your medical director agreements (and other agreements) with your physician partners to confirm that the consideration paid is fair market value for the service performed. Confirm that the services are actually provided and that the parties have a means for confirming the same.
6. Hospitals and Other Institutional Providers: Prior to entering into arrangements with your physician partners, consider whether the services requested both address an identified need and are services that can be provided by a physician partner given his/her already full schedule. Carefully reconsider entering into more than one services agreement with any single physician. Review your fair market value reports / other evaluation of the compensation paid under the agreements to ensure that careful consideration has been given to the reasonableness of the services -- both in terms of need and confirmation that such have been provided as agreed upon.

The evolution of health care delivery systems continue to require that physicians, hospitals and other institutional health providers work closely to develop better delivery mechanisms, higher quality of services and more efficient patient interactions. Meaningful collaboration and jointly developed leadership will remain critical to meeting these objectives and no one is suggesting that such objectives are developed absent reasonable compensation for services rendered. However, the Fraud Alert is a meaningful reminder that both physicians and hospitals must remain vigilant in maintaining their commitment to health care compliance.

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