PUBLICATION

OIG Fraud Alert Serves as Stern Warning to Physicians Regarding Compensation Arrangements

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Emphasizing its continued focus on physician compensation arrangements, the OIG issued a Fraud Alert on June 9, 2015, warning that physicians risk significant penalties if medical directorships and other compensation arrangements are not consistent with fair market value (Physician Compensation Arrangements May Result in Significant Liability). While the Fraud Alert did not provide any new antikickback interpretation or advice, it serves as a warning to physicians, and the entities with which physicians contract. The OIG focused on whether physician compensation arrangements violate the antikickback statute, particularly medical director agreements. The OIG states that such arrangements must reflect fair market value and be for bona fide services that the physicians *actually provide*.

The Fraud Alert notes that the OIG has recently settled cases with 12 individual physicians that had entered into medical directorship agreements with a health care entity under which the compensation reflected the volume or value of referrals to that entity, and the physicians did not actually provide the services set forth in the agreement. Though the OIG did not specifically name the settlements, it appears to be referencing recent settlements stemming from the government's investigation of Fairmont Diagnostic Center (Fairmont), a Texas imaging company, and Jack L. Baker, M.D. (*see* the Settlement Press Release). Those settlements stemmed from a *qui tam* action alleging that Fairmont entered into sham medical director agreements with individual physicians, pursuant to which the physicians received compensation that took into account their referrals, and performed little or no services under the agreements. In addition, the relators alleged that Fairmont paid for administrative staff to operate in the physicians' practices as “referral coordinators” and perform other administrative duties on behalf of the physicians. The government executed a settlement with Fairmont and Dr. Baker, pursuant to which Dr. Baker agreed to pay $650,000 and serve a voluntary suspension from the Medicare and Medicaid programs for six years. In addition, 12 physicians who purportedly received the unlawful remuneration from Dr. Baker and into separate settlements with the government ranging from $50,000 to $195,000. One family practice physician agreed to a voluntary exclusion from the Medicare and Medicaid programs.

The Fraud Alert is a reminder that the OIG has a continued investigatory focus on physician compensation arrangements. In addition, it indicates that the OIG is not just targeting the health care entities that enter into potentially problematic arrangements, but also the physicians who benefit from such arrangements – a recent trend in the industry.

Hospitals and other entities that regularly contract with physicians for medical director and other administrative services should ensure that their contracts reflect fair market value compensation for actual services provided. Such entities should consider whether there is a legitimate business need for the services to be provided and ensure that sufficient compliance processes are in place to ensure that the services are actually provided.