

HEALTH CARE ALERT

6/11/15

HHS Office of Inspector General Signals Crackdown on Doctor Compensation Arrangements with New Fraud Alert

On June 9, 2015, the Department of Health and Human Services Office of Inspector General (OIG) issued a fraud alert that likely signals increased interest by the government in pursuing individual doctors who commit fraud involving federal health care programs. For the past few years, the focus of most HHS fraud investigations has landed heavily on hospitals, nursing homes and other health care organizations. The signaled interest in individual doctors indicates that HHS now wants physicians to “get the message” that they are individually responsible under federal fraud and anti-kickback laws and will be held accountable.

The alert specifically puts doctors on notice regarding compensation agreements, particularly in medical directorships and other similar arrangements, which do not reflect fair market value for bona fide services the physician actually provides. Compensation based on the quantity or value of either past or future referrals are a red flag, along with any arrangement whereby an unaffiliated entity contributes to the salaries of the physician’s staff or where the level of services provided by the physician falls short of what might normally be expected for the amount of compensation received.

Presumably in an effort to drive the message home, the bulk of the OIG alert focused on 12 recent cases in which individual physicians were fined anywhere from \$50,000 to \$200,000, and in several cases were excluded from doing business with federal programs, like Medicare and Medicaid, for up to six years. The 12 had entered into questionable medical directorship and office staffing arrangements that the OIG determined constituted improper remuneration under the anti-kickback statute.

Physicians may be approached by many different entities with an interest in filling directorship and similar positions. Doctors need to assess these opportunities, and the compensation arrangements that come with them, with “eyes wide open” for details that may bring them under federal scrutiny. Doctors should take care to avoid any compensation that is tied to referrals or just seems too good to be true. The potential penalties under federal fraud and anti-kickback statutes can include monetary and administrative penalties, and even jail time where the fraud rises to the level of criminal activity.

Roetzel’s Health Care attorneys are well-versed in the review of business arrangements to minimize concerns under such fraud and abuse laws as Stark, Anti-Kickback Statute, False Claims Act and various state laws. For assistance, please contact any of the following Roetzel Health Care attorneys.

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