Under the Microscope: OIG's Alert Signals Continued Focus on Physician Liability

June 16, 2015

In its June 9, 2015, Fraud Alert entitled “Physician Compensation Arrangements May Result in Significant Liability,” the Department of Health and Human Services Office of Inspector General (“OIG”) notified the health care industry of its continued focus on questionable physician compensation arrangements. The latest in a string of OIG alerts targeting physician behavior, the Fraud Alert highlighted compensation arrangements such as medical directorships as being ripe for abuse, with physicians being compensated far more than fair market value for the services actually rendered. The Fraud Alert is a clear message that the OIG is ramping up its efforts to hold physicians accountable, civilly and criminally, under federal fraud and anti-kickback laws.

Emphasizing individual responsibility, the OIG described how it recently reached settlements with 12 physicians regarding questionable medical directorship and office staff arrangements. The OIG alleged that the compensation paid to these physicians amounted to improper remuneration under the anti-kickback statute because it (a) took into account the volume or value of referrals made by the physicians, (b) did not reflect the fair market value of the services being performed, (c) involved situations where the physicians did not provide the contracted services, and/or (d) relieved the physicians of the financial burden of paying the salaries of their office staff. The OIG determined that the physicians were an integral part of the scheme and, thus, subject to liability under the Civil Monetary Penalties Law.

The OIG’s Fraud Alert is a reflection of recent U.S. Department of Justice policy announcements by Assistant Attorney General Leslie Caldwell regarding corporate cooperation and greater individual accountability in enforcement actions. While the OIG will still focus on large institutional providers, it has announced a turning point in fraud enforcement as it sees physicians as an increasingly important target. As gatekeepers whose medical decisions are essential to getting services authorized, physicians play an integral role in the Medicare and Medicaid programs and can be the source of much of the fraud that is pervasive in the health care industry. As a result, the OIG is placing a spotlight on physicians and requiring valid reasons for their compensation, especially where such arrangements implicate either past or future referrals.

The OIG “encourages physicians to carefully consider the terms and conditions of medical directorships and other compensation arrangements before entering into them.” In light of this most recent Fraud Alert, physicians and entities that contract with physicians must exercise care when structuring physician compensation arrangements. Physicians should adhere to the following principles: (a) avoid any compensation arrangement that is tied to referrals, (b) always document the services rendered under a compensation arrangement, and (c) make sure that you perform all services for which you are being paid at fair market value.

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