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OIG Issues New Fraud Alert: Physician Liability for Inappropriate Compensation Arrangements

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Executive Summary

On June 9, 2015, the U.S. Department of Health and Human Services Office of the Inspector General (“OIG”) released a Fraud Alert (the “Alert”) warning that physicians can face significant liability for entering into compensation arrangements that potentially violate the Federal Anti-Kickback Statute (“AKS”). Specifically, OIG noted that physicians entering compensation arrangements, such as medical directorships, must ensure that the compensation provided reflects fair market value for actual services the physicians provide

Background

The AKS generally makes it a criminal offense for any person to knowingly and willfully solicit, receive, offer or pay any remuneration in return for or to induce referrals of items or services that may be paid in whole or in part under a federal health care program. OIG has consistently held that if even one purpose of a compensation arrangement is to induce referrals, then the AKS is violated.

In the Alert, OIG noted that it recently reached settlements with 12 individual physicians related to certain medical directorship and office staff arrangements that OIG alleged violated the AKS. OIG contended that the compensation paid to the physicians under these arrangements constituted improper remuneration because the compensation took into consideration the volume or value of the physicians’ referrals, did not reflect fair market value for the physicians’ anticipated services and the physicians did not actually provide the services contemplated under the agreements. Additionally, OIG alleged that some of the physicians entered into arrangements with an affiliated health care entity under which the entity agreed to pay the salaries of some of the physicians’ office staff. The payments made under these arrangements relieved the physicians from the financial burdens associated with paying their own staff, which OIG alleged constituted improper remuneration to the physicians. Based on these allegations, OIG determined that the physicians were “an integral part of the scheme” and therefore subject to liability under the Civil Monetary Penalties Law.

Practical Takeaways

OIG’s new Alert sends an important warning to physicians. While historically much of OIG’s enforcement activity related to improper physician compensation relationships has focused on hospital and other provider liability, physicians should beware of their own potential personal exposure associated with such arrangements. To avoid liability, physicians should carefully consider the terms of proposed compensation arrangements with hospitals and other providers to ensure that all such arrangements are in compliance with the AKS and other applicable laws and regulations.