Physician Directorships the Focus of New Fraud Alert

SUMMARY
On June 9, 2015, the Department of Health and Human Services Office of Inspector General (OIG) published a one-page fraud alert entitled, “Physician Compensation Arrangements May Result in Significant Liability.” This is the 3rd consecutive OIG fraud alert that focuses upon individual physician behavior.

In 2013, the OIG warned that so-called physician-owned distributorships were “inherently suspect” under the Federal Anti-Kickback Statute (AKS). The Firm previously wrote about this 2013 fraud alert, which can be viewed at http://tinyurl.com/healthcarealert032713. In 2014, the OIG published an alert that focused on payments to referring physicians from laboratories, reminding physicians that the AKS applies to both the payment and receipt of remuneration for referrals of federal health care business.

In this most recent fraud alert, the “OIG encourages physicians to carefully consider the terms and conditions of medical directorships and other compensation arrangements before entering into them.” The OIG noted that it recently entered into settlements with 12 individual physicians who the OIG alleged entered into “questionable medical directorship and office staff arrangements.”

This OIG fraud alert is a reminder that if physicians enter into directorship contracts for their services, they must be fair market value arrangements and the compensation must not be based on the volume or value of any referrals under a federal health care program. Ideally, the arrangement should be structured to fit within the AKS safe harbor for personal services and management contracts. Medical directorships can serve important purposes and the services provided by the physician need to be documented contemporaneously. It appears that OIG is shifting its focus to the conduct of individual providers – as well as facilities – based upon its most recent fraud alerts. A copy of the June 9, 2015 fraud alert can be reviewed at http://tinyurl.com/OIG-doc1.

Members of Saul Ewing’s Health Practice Group have experience counseling providers – facilities and physicians and physician groups – with respect to medical director arrangements and compliance with the relevant federal and state fraud and abuse laws. For more information on this Client Alert, please contact the authors or the attorney at the firm with whom you are regularly in contact.

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