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Physician compensation arrangements on OIG radar

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The Department of Health and Human Services Office of Inspector General (the "OIG") issued a [fraud alert](#) today highlighting certain physician compensation arrangements that run a high risk of violating the federal anti-kickback statute (the "AKS"). The OIG emphasizes that in order to prevent AKS violations, physician compensation arrangements—including medical directorships—must reflect fair market value for the bona fide services that physicians actually provide under the arrangements.

The alert serves as a reminder that under the AKS, physician compensation arrangements may not include illegal remuneration for federal health care program referrals, and any arrangement that takes into account a physician's volume or value of referrals or does not reflect fair market value for services provided raises red flags to regulators and may subject physicians to possible criminal, civil and administrative sanctions. Further, even if one purpose of the arrangement is to compensate a physician for his or her past or future referrals of federal health care program business, the arrangement violates the AKS.

Not only do physician compensation arrangements continue to be on the OIG's enforcement radar, but the alert's reference to 12 recent settlements with individual physicians who were involved in suspicious payment arrangements highlights the fact that the physicians who are an integral part of a fraudulent compensation scheme are subject to liability under the Civil Monetary Penalties Law. The questionable arrangements subject to recent settlement involved improper remuneration under the AKS for reasons including: payments that took into account the physician's volume or value of referrals, payments that did not reflect fair market value and payments where the physicians did not actually provide the services called for under the agreements. One of the arrangements at issue even relieved physicians of a financial burden they otherwise would have incurred by allowing for an affiliated health care entity to pay the salaries of the physicians' front office staff.

Given the threat of expensive settlements and enforcement actions, it is imperative that physicians work with counsel to carefully consider the terms and conditions of medical directorships and other physician compensation arrangements. There is also an available AKS safe harbor for personal services and management agreements where payments made by a principal to an agent as

compensation for services of the agent do not qualify as illegal remuneration as long as certain specified conditions are met.

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