OIG Fraud Alert Focuses on Physician Compensation Arrangements

The OIG, which rarely issues fraud alerts, released one on June 9, 2015 entitled Physician Compensation Arrangements May Result in Significant Liability. These type of alerts are rare (since 2011 there have only been four issued) and are indicative of a high-risk area for Fraud and Abuse which is ripe for investigation by agencies of the federal government and a target of whistleblowers.

This fraud alert is targeted at Physicians and directs that all compensation arrangements need to be fair market value and reflect payment for bona fide services that have been provided. Furthermore, the alert states that if any purpose of the arrangement is to compensate a physician for past or future referrals the potential does exist for violation of the anti-kickback statute. This could result in possible criminal, civil or administrative sanctions, including but not limited to exclusion from the federal healthcare programs and potential draconian penalties via the false claims act.

If you are a Physician or work with a Physician Group my professional advice is you focus on the compliance of each of your arrangements with organizations that you refer patients. At MediTract, we work with over 25% of the nation’s hospitals and many Physician Practices to provide automated contract solutions to address these specific concerns.

Ten questions for Physician Organizations to ask

In response to this fraud alert some immediate questions for Physician Organizations to ask include, but are not limited to:

1. How do you validate work described in the agreement has been performed?
2. Are all your contracts organized in one centralized database so you can interactively monitor and manage this high-risk information?
3. Are all these arrangements subject to a business and legal review by your experienced healthcare counsel?
4. Is the work described in the contract bona fide and is it being performed?
5. Is the work being performed being paid at Fair Market Value and how do you validate this?
6. If you have different duties should they be paid at different rates?
7. Does the agreement mention anything about referrals?

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8. Is your partner evaluating the work you are doing and is that evaluation documented?
9. How do you validate that payments received match the work performed per the agreement?
10. Do you have a protocol or policy for who approves these agreements?

Be proactive and take responsibility for monitoring your arrangements

Please do not rely upon your arrangement partner to “handle” these issues. A contract which is not compliant will present risk to both the Physician and the Hospital (agreement partner). In addition, please be advised that errors or mistakes in your arrangements do not need to be intentional to be prosecuted. Unintentional behaviors can present significant risk. Be sure due diligence is being performed pro-actively to assure your arrangements are compliant.

About the Author

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Bret is a nationally recognized veteran in healthcare compliance. He began his career in healthcare compliance in 1997 and joined MediTract in September, 2013. From 2010 – 2013 Bret was the Senior Vice President, Chief Ethics and Compliance Officer of UMDNJ where he is credited with successfully reengineering the nation’s largest sector compliance and ethics program under a rigorous Corporate Integrity Agreement with DHHS/OIG. He is the author of the Compliance Officer’s Handbook, published in 2006, and has presented at 100+ regional and national industry conferences/meetings on numerous compliance topics. He has over 30 years of diversified health care management, operations and compliance experience.

Bret earned his MBA from Wilkes College in Wilkes-Barre, Pennsylvania. He is a Fellow of the American College of Healthcare Executives, the Health Care Compliance Association (Certified – CHC), and the Healthcare Financial Management Association. He is a Past President (2001-2003) for Region 2 of the HCCA.