

Illegal Kickbacks: HHS Office Of Inspector General Scrutinizing Practitioners' Office Rental Deals With Referring Physicians.

The Office of Inspector General, U.S. Department of Health and Human Services, recently issued a Special Fraud Alert concerning rental of space in physicians' offices by persons or companies that provide health care items or services to patients that are referred, either directly or indirectly, by the physician-landlord.

The OIG is concerned about rental arrangements where the rental payments may contain disguised kickbacks for referrals from the physician-landlord.

The OIG says it has received numerous credible reports of cases where practitioners or vendors whose businesses depend on physicians' referrals pay rents that are unnecessary or in excess of the fair market value for the space, to access the physicians' potential referrals.

According to the OIG, most of the items or services typically provided in the rented space are for patients, referred or sent, either directly or indirectly, to the supplier by the physician-landlord.

The Federal Anti-Kickback Law, Section 1128B(b) of the Social Security Act, prohibits knowingly and willfully soliciting, receiving, offering or paying anything of

The Office of Inspector General is concerned about business arrangements involving practitioners or vendors who rent space in physicians' offices and depend on referrals from their physician/landlords.

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value to induce referrals of items or services payable by a Federal health care program.

Both parties to an illegal kickback transaction can be criminally liable.

Violation of the Anti-Kickback Law is a felony punishable by a maximum fine of \$25,000, imprisonment up to five years, or both.

The OIG can also initiate administrative proceedings to exclude the guilty from Federal health care programs or to impose civil monetary penalties.

The rationale of the Anti-Kickback Law is that kickbacks can distort medical decision-making, cause overutilization, increase costs and result in unfair competition by freezing out competitors who are unwilling to pay kickbacks.

Kickbacks can also adversely affect the quality of patient care by encouraging physicians to order services or recommend supplies based on profit rather than the patient's best medical interests.

The Anti-Kickback Law applies to nurse practitioners, nurse midwives or any other practitioner or vendor if Federal funds are involved. However, this particular Special Fraud Alert was prompted by concerns about rental arrangements between physician-landlords and:

Comprehensive outpatient rehabilitation facilities that provide physical and occupational therapy and speech-language pathology services in physicians' and other practitioners' offices;

Mobile diagnostic equipment suppliers that perform diagnostic related tests in physicians' offices; and

Suppliers of durable medical equipment, prosthetics, orthotics and supplies that set up consignment closets for their supplies in physicians' offices.

The OIG asks anyone who has information about suspicious rental arrangements between physicians and suppliers to contact one of the regional offices:

- Boston (617) 565-2664
- New York (212) 264-1691
- Philadelphia (215) 861-4586
- Atlanta (404) 562-7603
- Chicago (312) 353-2740
- Dallas (214) 767-8406
- Los Angeles (714) 246-8302
- San Francisco (415) 437-7961

All OIG Special Fraud Alerts are available on the internet at the OIG web site <http://www.dhhs.gov/progorg/oig/frdalrt/index.htm>.

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