

Part B Insider (Multispecialty) Coding Alert

ANTI-KICKBACK STATUTE: Labs Offering Favors at No Charge May Violate Anti-Kickback Rules

Simply labeling test tubes on behalf of a dialysis facility could be going too far, the OIG says

Sometimes it doesn't pay to be nice--at least according to the OIG's latest advisory opinion.

An anonymous contact asked the OIG to offer an opinion on whether a laboratory was breaking any rules by labeling test tubes and specimen collection containers at no cost to dialysis facilities.

The OIG responded on May 9 with Advisory Opinion No. 08-06, in which **Lewis Morris**, chief counsel to the **Inspector General** notes that the arrangement -could potentially generate prohibited remuneration under the anti-kickback statute,- and indicated that the OIG could impose administrative sanctions on the lab if the arrangement were to go into effect.

Although this opinion may sound extreme to some, it does lie within the legal interpretation of the anti-kickback statute, explains **Tom O-Mahoney, Esq.**

-The statute prohibits entities from offering services to induce referrals,- O-Mahoney says. -In this case, the lab has offered the labeling service, which could be construed as an attempt to get more referrals from the dialysis facility, O-Mahoney advises.

-It's possible that the lab is just being nice in trying to label everyone's specimen cups so there is no confusion when they come into the lab,- he says, -or, the lab might be doing something calculating to try to garner more business. There is no way of knowing without further investigation, and the OIG goes by the statute.-

OIG May See Inducement As Cash

-Everyone knows that a lab can't give cash to a facility in exchange for referrals,- says **Devin Ingram, Esq.** -But in most cases, the OIG will view the gift or service as the same as cash--an inducement in exchange for a service, and that's what the new advisory opinion indicates.-

To read the OIG's advisory opinion, visit the OIG Web site at www.oig.hhs.gov/fraud/docs/advisoryopinions/2008/AdvOpn08-06.pdf.