

Part B Insider (Multispecialty) Coding Alert

COMPLIANCE: CMS Cracks Down on Device-Makers' Relationships With Docs

Avoid relationships that suggest incentives from manufacturers

If your physician is on the payroll of medical device manufacturers, you should examine those relationships and make sure they're on the up and up.

Last September, five orthopedic device makers escaped criminal prosecution, despite the fact that the government filed criminal complaints against four of them for -conspiring to violate the federal anti-kickback statutes,- according to a summary of the complaint issued by the **U.S. Department of Justice**. Four of the five companies entered into settlements topping \$290 million as part of the investigation, the DOJ document stated.

At issue was whether the companies used consulting agreements with orthopedic surgeons as inducements to use their hip and knee replacement products.

But if you thought this situation was old news, think again. **Lewis Morris**, the OIG's chief counsel spoke at an **American Academy of Orthopaedic Surgeons** seminar earlier this month and told the group that the OIG would be -looking at those soliciting kickbacks,- according to a recent New York Times article on the topic.

Keep in mind: -A kickback accusation would have to be re-viewed carefully by federal investigators before charges could be filed,- says **David J. Zetter, PHR, CHCC, CHCO, CPC, CPC-H, PCS, FCS, CHBC**, of **Health Care Professional Management Services** in Mechanicsburg, Pa. -But investigators scrutinize these relationships because if a manufacturer incentivizes a physician, the doctor may buy that piece of equipment even if it's not the right device for that patient because they're receiving remuneration from that company. Whether it's an implant, a prosthetic, or whatever the case may be, it's kind of hard for any doctor to receive money from someone and not reciprocate, and that's why these types of contracts can be frowned upon.-

Take home point: If you are considering entering into a consulting agreement with a device manufacturer, pharmaceutical company or durable medical equipment producer, examine the agreement carefully.

-Anyone considering such an agreement should have an attorney that's well-versed in healthcare law, and more specifically Stark and anti-kickback law, review it,- Zetter says.

To read the DOJ's announcement from the September decision, visit www.usdoj.gov/usao/nj/press/files/pdf/hips0927.rel.pdf.