

## Part B Insider (Multispecialty) Coding Alert

### Compliance: OIG: We're Looking at You, Laboratories

#### Latest 'Special Fraud Alert' hones in on labs' connections to physician practices.

The relationship between physician practices and laboratories has been under scrutiny for many years, but the OIG has recently taken an extra step in its oversight of this connection.

On June 25, the OIG released its "Special Fraud Alert: Laboratory Payments to Referring Physicians" document, which outlines the various arrangements under which labs and medical practices can run afoul of the law. Specifically, the OIG is focusing on "transfers of value" from labs to physicians that represent a substantial risk of fraud and abuse under the anti-kickback statute.

If a lab offers "anything of value not paid for at fair market value" to a referral source, it could be considered a kickback, the OIG says in the document. "This is because such transfers of value may induce physicians to order tests from a laboratory that provides them with remuneration, rather than the laboratory that provides the best, most clinically appropriate service." In addition, the OIG continues, it could entice doctors to order tests that aren't medically necessary.

One common type of kickback involves labs paying physicians a "Specimen Processing Arrangement" fee to cover the practice's work collecting, processing and packaging patients' blood specimens. These fees can be illegal if they exceed fair market value, duplicate payments from insurers (such as Medicare), are paid directly to the ordering physician rather than the group practice, or meet several other conditions that the OIG deems unlawful.

#### Know What the Law Entails

If you're one of the physician practices or labs that read the OIG's report and felt confused about the specifics of the self-referral law, you may need a quick compliance refresher on what the law covers and what it entails.

"The physician referral law (section 1877 of the Social Security Act) prohibits a physician from referring patients to an entity for a designated health service (DHS), if the physician or a member of his or her immediate family has a financial relationship with the entity, unless an exception applies," CMS says on its website. "The law also prohibits an entity from presenting a claim to Medicare or to any person or other entity for DHS provided under a prohibited referral."

**For example:** Suppose you are a primary care physician and your wife owns a laboratory. You cannot refer patients to her lab, or you could be subject to penalties under the self-referral law. The assumption is that you might be persuaded to refer more patients for lab tests than are necessary because you want your wife to get more business.

**Exceptions apply:** There are exceptions to this law, and you can apply for one if you feel you qualify. For instance, in the example above, if your wife owns the only lab in a 30-mile radius and your patient is truly in need of nearby lab services, you can apply for the exception. To read more about the self-referral law, visit [www.cms.hhs.gov/PhysicianSelfReferral/01\\_overview.asp#TopOfPage](http://www.cms.hhs.gov/PhysicianSelfReferral/01_overview.asp#TopOfPage). To read the OIG's recent Special Fraud Alert on labs, visit [http://oig.hhs.gov/fraud/docs/alertsandbulletins/2014/OIG\\_SFA\\_Laboratory\\_Payments\\_06252014.pdf](http://oig.hhs.gov/fraud/docs/alertsandbulletins/2014/OIG_SFA_Laboratory_Payments_06252014.pdf).