

Part B Insider (Multispecialty) Coding Alert

Compliance: OIG Puts Brakes on Leasing Space to Other Physicians

Be mindful of anti-kickback rules when leasing space

You own a cancer center where your patients can get their radiation and chemotherapy in one central location, so why not lease space to a urology group so the patients can easily stop by and accomplish their follow-up visits?

Not so fast, says the OIG in an Aug. 26 advisory opinion.

The facts: According to the OIG report, a freestanding cancer clinic offers many services, including intensity-modulated radiation therapy (IMRT), which is common in treating prostate cancer. Some urologists refer their patients to the cancer facility for their IMRT treatments.

Therefore, the clinic suggested an arrangement where, pursuant to a series of agreements, the urologists would lease space in their building and provide personnel and equipment, allowing the urologists to treat patients and provide IMRT.

In exchange, the urology group would pay the cancer center rent and other expenses

The decision: The Office of Inspector General determined that the arrangement "could potentially generate prohibited remuneration under the anti-kickback statute."

Here's why: "The troublesome aspect of the contemplated relationship between the oncologists and the urologists is that the urologists are expanding into a related line of business, which is dependent on referrals from, or other business generated by, the urologist's existing patient basis," says **Emily Kretchmer, Esq.**, of **Pierce and Mandell** in Boston. "The contemplated relationship would allow the urologists to capture revenue from referrals that they would not otherwise be entitled to without any real business or financial, capital or human resources commitment."

"Although it's difficult precisely to draw the line between contracts the OIG believes are permissible and those it does not, the contracting parties would have a stronger case if the billing physician group made a significant incremental investment in the specific space used to provide the service," says **Alan H. Rumph, Esq.** of **Smith, Hawkins, Hollingsworth & Reeves, LLP** in Macon, Ga. "Due to radiation containment standards, that's not generally possible with IMRT or other radiation therapy."

To read the advisory opinion in full, visit <http://www.oig.hhs.gov/fraud/docs/advisoryopinions/2008/AdvOpn08-10A.pdf>.