Part B Insider (Multispecialty) Coding Alert

Compliance: Physician-Owned Business Settles Stark and Anti-Kickback Allegations for Over $7 Million

Plus: Stark under-arrangement law changes may alter how you can do business.

Trading cash payments for patient referrals might temporarily make a company financially flush -- but eventually, it will cause nothing but problems. Why? Because under the Federal anti-kickback and Stark laws, such referrals are illegal.

Earlier this month, a group of physician-owned urology centers that provided hospitals with lithotripsy and laser services/equipment entered into a Civil Monetary Penalty settlement agreement with the OIG, resulting in a $7.3 million settlement, according to a July 8 OIG news release.

The OIG alleged that the company "and certain of its physician-owners, leveraged patient referrals to obtain contract business from hospitals in Illinois, Indiana, and Iowa," the OIG release indicates. In addition, the OIG alleged that the company caused some hospitals to submit claims for services that resulted from prohibited referrals that violated the Stark self-referral laws.

Physician-Owned Entities Under the Microscope

This high-profile settlement creates new focus on physicianowned businesses, which have long been targets of the OIG's interest.

"This settlement sends a strong message that companies, including those with physician-owners, cannot use Federal health care beneficiary referrals to line their pockets by securing business from hospitals or other providers," said **Daniel Levinson,** the Inspector General, in the July 8 statement. "We continue to have serious kickback concerns when companies link investment opportunities to the ability to generate business and offer returns on investment that are disproportionate to business risk."

What you can do: Avoid setting up any type of business relationship that relies on trading referrals. "You can't go into a deal with a group and say 'If you refer patients to me, I'll refer the following ancillary services to you,'" says **Michael F. Schaff, Esq.,** with Wilentz, Goldman and Spitzer in Woodbridge, N.J.

"Any time there is a relationship between physicians and referring physicians (or a hospital or other facility), you have to consider any potential kickback concerns that the OIG could raise," Schaff says. "If a physician is considering investing, for example, in an ASC, you can't say that the physician is planning to bring in 20 percent of the ASC patients so he'll own 20 percent of the business, and another physician will bring in five percent of the patients so he will own five percent of the business. That would raise a red flag very quickly."

Know How Stark Reg Revamp Impacts 'Under Arrangement' Services

In addition to ensuring that practices stay compliant with Stark laws, the government also seems set on broadening the laws to ensure that more entities fall under the self-referral laws. In the Medicare world, the fate of a healthcare provider often hinges on the interpretation of a single word like "reasonable" or "necessary" -- and under the Stark law, a critical word is "entity," which, as of Oct. 1,, 2009, has had a broader impact on how healthcare providers can do business.

In a nutshell: The Stark law forbids physicians from referring Medicare patients for designated health services (DHS) to an entity with which the physician or an immediate family member has a financial relationship -- unless there's a Stark exception. And the Stark regulations now define entity as covering both the party performing the DHS, as well as the party billing for the DHS. The change affects so-called under-arrangement services, where a hospital or other healthcare

provider enlists a third party to provide services to Medicare patients and then bills Medicare for them directly.

Example: In the past, an under-arrangement service provider could deliver cardiac catheter services under arrangement to a hospital without worrying about physician ownership. The under arrangement service provider would typically provide the equipment, supplies, and the technicians necessary to deliver the service. The hospital would then bill the service under its Medicare provider agreement. But now that type of deal, if it involves physician ownership in the ancillary service provider, won't fly under Stark.

To comply with Stark, the physicians' ownership would have to satisfy an ownership exception to the Stark law, which can be difficult to do.

The fallout: As a result of the change to Stark, some of the under arrangement service providers have gone away since the changes were announced.

To read the OIG's Corporate Integrity Agreement with the physician-owned entity, visit http://oig.hhs.gov/fraud/cia/agreements/united_shockwave_07082010.pdf.