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Compliance: Unsure What Constitutes Anti-Kickback? We've Got the Facts

Check out these examples of fraud

The OIG notes that the federal anti-kickback law has been "on the books since 1972," but some practices are still unsure of what the law actually covers.

The OIG evaluates whether practices violate the anti-kickback statute on a case-by-case basis, says **Michael Schaff, Esq.,** of **Wilentz, Goldman and Spitzer** in Wood-bridge, N.J.

"The OIG looks at the facts, and sometimes, even though a case may implicate the anti-kickback law, the OIG will determine that the intent to violate the anti-kickback law is not there and they may not have a problem with the specific facts in question," Schaff says. "In some cases, practices are looking to find a safe harbor so they won't be implicated under the anti-kickback rule."

In case you're confused about what actually constitutes an anti-kickback violation, we've got a few firm examples.

1. Sham leases. Some physicians enter into office rental contracts with other referring physicians, solely in order to obtain the referrals, according to an OIG report.

2. Lab employees providing free care. The OIG issued a special fraud alert regarding clinical laboratories that place phlebotomists in physicians' offices.

In the opinion, the OIG noted, "While the mere placement of a laboratory employee in the physician's office would not necessarily serve as an inducement prohibited by the anti-kickback statute, the statute is implicated when the phlebotomist performs additional tasks that are normally the responsibility of the physician's office staff."

If the phlebotomist provides services such as blood pressure checks, "a strong inference arises that he or she is providing a benefit in return for the physician's referrals to the laboratory," the OIG notes.

3. Fake business agreements. The largest anti-kickback agreement to date was for nearly $6 million after the OIG accused PharMerica of wrongdoing.

According to OIG documents, the company bought a small Virginia pharmacy for "an excessive amount" in exchange for a commitment from the sellers, who also owned 17 nursing homes and eight assisted living facilities, to refer their patients' pharmacy business to PharMerica for the next seven years.

In addition to the lofty remuneration amount that PharMerica paid the government, the company also entered into a five-year corporate integrity agreement.

Tip: If you are unsure of whether your arrangement violates the anti-kickback laws, contact an experienced healthcare attorney who is well-versed in the anti-kickback statute, Schaff advises.