

Part B Insider (Multispecialty) Coding Alert

FRAUD & ABUSE: OIG May Dislocate Your Joint Venture

Durable medical equipment companies won a starring role in the **HHS Office of Inspector General's** latest fraud guidance on joint ventures.

The OIG is once again warning healthcare providers and suppliers of the kickback risks inherent in certain kinds of joint venture arrangements. In an April 23 special advisory bulletin on contractual joint ventures, the OIG states that potentially illegal business deals are proliferating in the healthcare industry.

And JVs with durable medical equipment suppliers are under particular scrutiny. The OIG bulletin cites, as examples of troublesome deals, arrangements between a hospital and a DME supplier, a DME supplier and a mail-order pharmacy, and a nephrology practice and a home dialysis supply company.

This is not the first time the watchdog agency has raised concerns on this issue. In 1989, the OIG released a special fraud alert on the perils of joint ventures. But in the new bulletin, the agency has a particular kind of deal in mind.

The bulletin zeroes in on JVs in which a healthcare provider (the owner) in one line of business expands into a related area by contracting with an existing provider (the manager/supplier) in that field to serve the owner's existing patient population - for example, a hospital that teams with a DME supplier to launch a DME venture, or a DME supplier that teams with a pharmacy to provide nebulizer drugs.

This doesn't mean DME suppliers can never enter into joint ventures, says attorney **Elizabeth Hogue** in Burtonsville, Md. "The OIG gives a clear road map about the factors that are likely to invite scrutiny," she says.

So if you're planning to join forces with another provider, look for key factors that are likely to trigger review. The five red flags are:

1. the owner expands into a line of business that's dependent on referrals from the owner's existing business
2. the owner contracts out virtually all of the operations of the new business rather than committing its own resources
3. the manager/supplier is already established in the owner's new line of business and thus would be a competitor if the owner were investing its own resources
4. the owner and the manager/supplier share in the economic benefit of the new business
5. payments to both the manager/supplier and the owner vary based on the owner's referrals to the new business.

"The key seems to be to structure joint ventures so that entities that control the flow of referrals, such as physicians and hospitals, bear the financial risk or at least share the financial risk of the venture, as they would in any legitimate business," Hogue says. If you accomplish this goal, then you should be OK.