Part B Insider (Multispecialty) Coding Alert

Joint Ventures: Don't Go Into Business With An Ignorant Partner

Watch out for these physician-hospital joint venture pitfalls

In recent years physicians have formed ventures with hospitals and other providers to offer a specialized service to their patients. But the **HHS Office of Inspector General** has warned that such joint ventures pose compliance hazards under the anti-kickback and Stark self-referral laws.

The OIG issued two special fraud alerts on joint ventures, in 1989 and 2003. The agency warned that it would be suspicious of any venture in which one party controls the stream of referrals - especially if you've entered into a line of business that requires your referrals to survive.

Ideally, both parties in a joint venture should be bringing something other than patients to the table, and the business should be an extension of something both parties already do. When assessing equity joint ventures, however, it's easy for an onlooker to "conclude that [the business] doesn't stand on its own," says attorney **Kelly Clarke** with **Baird Holm McEachen Pedersen Hamann & Strasheim** in Omaha, NE. Often a join venture looks like one party buying a stream of referrals from another party that sells the referrals so it can profit from a percentage of the referred-out service, she adds.

In the ideal joint venture, each party should have a reason to partner with the other even if there are no patient referrals at stake, adds Clarke. Why each partner chose the other should be obvious: because each of them has some of what it takes to run that business, but they can do it better together than apart.

But in flawed joint ventures, you'll have one party that "doesn't know diddly about the business, but has patients" to refer, Clarke laments. And you'll have another party who knows how to run that business but doesn't have a ready flow of patients.

Example: If a hospital purchases services from a cardiology group, and the cardiology group generates most of the referrals for those services, the arrangement may look suspicious. If the cardiologists get paid $38 for every test they perform and they are in a position to generate the demand for those tests, that fact may also raise questions. "It is an easier analysis" if the physicians providing the "under arrangement" services aren't the main, or only, source of referrals, notes Clarke.

Reduce risk: Setting up an entity that's owned entirely by physicians and that provides services "under arrangement" to the hospital may be less risky. But you should still watch out for similar concerns, Clarke warns.