

Eli's Hospice Insider

Fraud & Abuse: Non-Employee Marketers Pose Big Compliance Risks

Don't risk long-term compliance for short-term gains in referrals.

Once you've decided to put some resources into your marketing staff, be sure you're staying on the right side of the law.

Hospices that have shied away from hiring dedicated marketing staff may think it's a smart move to put a toe in the water by hiring outside marketing liaisons. But think again, industry experts urge.

Steer clear of hiring independent contractors for marketing, advises **Michael Ferris** with **Simione Consultants**. Such relationships "are fraught with potential problems and historically have been an area of abuse," warns Chapel Hill, N.C.-based Ferris.

Even if outside marketing contractors are on the up-and-up, they still aren't an ideal fit for your agency, Ferris contends. "Anyone who represents my agency should be my employee and under my control with a referral partner relationship that is owned by the agency," he says. "An agency cannot afford to have someone representing them without proper supervision and control."

Plus: "If they own the relationship, then the agency is always at risk to lose those referrals if the independently contracted 'liaison' is given a better offer elsewhere," Ferris points out.

In addition to the fraud and abuse concerns, outside marketer efforts just haven't proven to be effective in generating business, says **Stephen Tweed** of **Leading Home Care ... ATweed Jeffries company** in Louisville, Ky.

Anti-Kickback Law Violations Likely

Paying commissions to contracted marketing personnel "is a long-standing concern of the **HHS Office of Inspector General**," points out attorney **Robert Markette Jr.** with **Benesch Friedlander Coplan & Aronoff** in Indianapolis. "OIG feels that paying outside marketing personnel a commission is basing their compensation on the volume or value of reimbursable business generated," Markette explains.

Reminder: Such arrangements are a violation under the anti-kickback statute. Violation of the AKS is a felony that is punishable by one to five years in prison and fines of up to \$25,000, Markette tells **Eli**. In addition, services provided as a result of a violation of the AKS are false claims under the False Claims Act. This means they are subject to recovery, plus damages and penalties of \$5,500 to \$11,000 per claim.

Plus, Medicare could impose sanctions such as civil monetary penalties and exclusion from participating in the program for AKS violations, Markette adds.

Do this: If you do decide to employ outside marketers, you should pay them "on an hourly rate or some similar amount that does not take into consideration the volume or value of referrals," Markette counsels. Providers have a lot more leeway with payment arrangements for directly employed marketers, he observes.

Hospices absolutely can pay their directly employed marketers incentives or bonuses based on the number of referrals they bring in, Tweed agrees. "But any time you pay anybody else for referrals, you trip into the fraud and abuse problems," he cautions.

Beware A Marketing Shakedown

Some outside marketing arrangements are little better than patient referral scams. "I have seen a number of these

'liaisons' who are not marketing people," Markette relates. "Instead, they are individuals with access to a pool of Medicare, Medicaid and Waiver beneficiaries who simply ask for a referral fee for each patient."

Beware these types of arrangements. "This is essentially a payment-for-referrals scheme and is a direct violation of the AKS," Markette warns. "A marketing liaison should be out visiting referral sources, making sales pitches, developing advertising, etc. -- the sort of things marketers traditionally do for clients."

Bottom line: "Hire and train ethical and professional sales people, provide them with training and support, and they will best ensure the future flow of referrals to your agency," Ferris counsels.