

## Health Information Compliance Alert

### Compliance: OIG: You Can Hire a Contractor to Process Pre-Authorizations

But the arrangement mustn't induce referrals.

If you abhor the tedious job of performing insurance preauthorizations, you may be able to outsource the task, according to a new OIG advisory opinion.

According to the opinion, posted on Sept. 26, a company asked the OIG whether its proposed arrangement would violate the Anti-Kickback Statutes.

The proposal: Under the arrangement, the company ("Newco") would manage a contract with radiology and imaging centers across the country to provide insurance preauthorizations when patients' insurers requested them.

In return, the imaging centers would pay the company a set fee for each preauthorization processed, "whether or not the patient's insurer ultimately grants the preauthorization for the subject radiology or imaging procedure," the report states.

The outcome: The OIG determined that the company was performing its services at a fair market rate, without the potential to influence referrals, and that the company was not a health care provider; instead, it was merely performing an administrative service.

Therefore, the OIG noted, the arrangement "would not result in referrals of federal health care program business" and "would not generate prohibited remuneration under the anti-kickback statute."

Rationale: "Newco is not marketing to patients or referral sources, it is not referring patients to the imaging centers, it's not referring patients to the doctors who refer patients to the centers, it's not owned by anyone in the provider chain, radiology and imaging are not reimbursed on a cost basis (so the fee to Newco doesn't affect reimbursement), and Newco is not determining what services are being ordered," says **William W. Horton, Esq.**, of **Haskell Slaughter Young & Rediker, LLC**.

Possibility: The advisory opinion made no bones about the fact that it saw the arrangement as legal. However, it's possible that the OIG may have had more of an issue with the agreement if Newco had taken a percentage of the fees it authorized rather than taking a flat fee.

"The OIG has consistently demonstrated that it strongly disfavors percentage fees, especially if they can be characterized in any way as marketing-related," Horton opines.

"Thus, I suspect that if you posed this same request with a percentage fee, the OIG would express concern that there is a risk that Newco personnel will somehow cause the initial preauthorization requests to be changed to requests for higher-paying services or additional services, thereby increasing Newco's compensation," Horton says.

To read the complete advisory opinion, visit the OIG Web site at <http://www.oig.hhs.gov/fraud/docs/advisoryopinions/2008/AdvOpn08-12.pdf>.