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## New OIG fraud alert puts doctors on notice

By [Lisa Schencker](#) | June 9, 2015

Doctors must be careful to avoid entering into payment agreements that could violate the anti-kickback statute, HHS' Office of Inspector General warned in a fraud alert Tuesday that follows a dozen recent settlements involving physician contracts.

The alert could signify that the feds are increasingly pursuing allegations against individual doctors, as opposed to just the hospitals and other organizations that pay them. Or it could be a way to remind physicians that they, too, are accountable for arrangements that skirt the law, experts say.

"I think what we're seeing is OIG taking more of an interest in pursuing the physician side of the question, at least looking at if a physician has some role to play or liability in the conduct," said Tony Maida, a partner at McDermott Will & Emery and a former deputy chief of the OIG's Administrative and Civil

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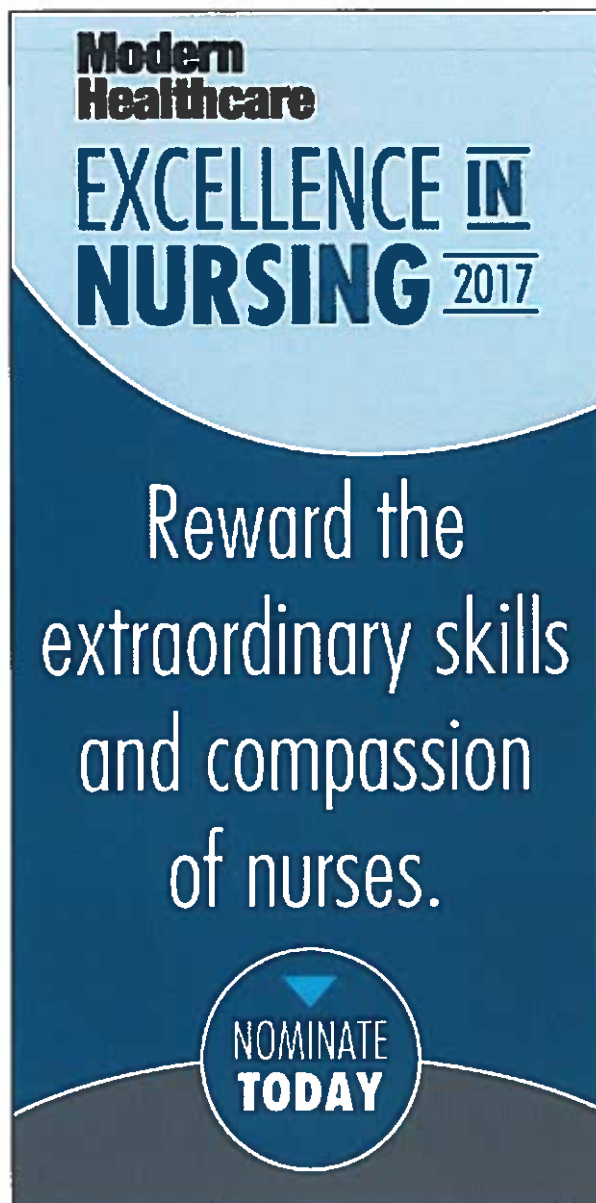
The alert warns doctors entering into payment arrangements, such as medical directorships, that their compensation must reflect fair market value for services provided. It's common for doctors to be employed by hospitals and other organizations as medical directors, but those arrangements might violate the anti-kickback law when their purpose is to get more referrals from those doctors, according to the alert.

The anti-kickback law prohibits the exchange of money for referrals involving federal healthcare dollars.

"Although many compensation arrangements are legitimate, a compensation arrangement may violate the anti-kickback statute if even one purpose of the arrangement is to compensate a physician for his or her past or future referrals of federal healthcare program business," according to the alert. "OIG encourages physicians to carefully consider the terms and conditions of medical directorships and other compensation arrangements before entering into them."

Maida notes that the new alert is the third in three years involving physicians. In 2013, the OIG issued a fraud alert about physician-owned device distributorships, and in 2014 it issued a fraud alert about lab payments to physicians.

The OIG has reached settlements recently with 12 individual physicians who entered into "questionable" medical directorship and office staff arrangements, the agency said. In those cases, the government alleged that payments to physicians took into account the volume or value of their referrals or did not reflect fair-market value, or that the doctors did not actually provide the services outlined in their agreements. In some cases, the OIG alleged that doctors entered into agreements in which an affiliated healthcare entity paid the salaries of their office staff.



The settlements appear to have been with doctors accused of receiving kickbacks through medical director and referral coordinator agreements with Fairmont Diagnostic Center and Open MRI in Houston. Attempts to reach Fairmont for comment Tuesday were unsuccessful. Under the terms of at least one of those settlement agreements, the company was excluded from doing business with federal programs for six years.

Samuel Louis, a partner at Strasburger & Price in Houston, said the OIG may have issued the alert as a way to put doctors on notice that they must go into compensation arrangements with their eyes open. He said the OIG may be noticing more physicians acting surprised when confronted with allegations that they violated the anti-kickback law by entering into such agreements.

Physicians are "approached by a lot of different entities and they sometimes don't pay attention to all the different things going on with the entity they're about to do business with," said Louis, who is also a former deputy criminal chief of the program fraud group for the U.S. Justice Department in the Southern District of Texas. "And when you don't do that, you put yourself at risk, and the risk is severe, financially."

Mark Silberman, a partner at Duane Morris in Chicago and a former special assistant U.S. attorney, said the alert is a reminder that the OIG is paying close attention to both physicians and the organizations that pay them in such arrangements. The alert also reminds physicians that though such cases are often handled civilly, they could be handled criminally as well if the government believes it can prove criminal intent, he said.

"Enforcement efforts have certainly gotten more aggressive," Silberman said. "When there's a violation of the anti-kickback statute, the liability flows on both ends of the transaction."

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