NEWS RELEASE

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Inspector General Announces Eight New Anti-kickback Statute Safe Harbors

The Department of Health and Human Services' Office of Inspector General today announced eight new final regulatory "safe harbors" to the federal anti-kickback statute, which prohibits the knowing payment of anything of value to influence referral of federal health care program business, including Medicare and Medicaid.

The new safe harbors, which protect certain arrangements from prosecution under the anti-kickback statute, address the following payment or business practices: investments in underserved areas; practitioner recruitment in underserved areas; obstetrical malpractice insurance subsidies for underserved areas; sales of physician practices to hospitals in underserved areas; investments in ambulatory surgical centers; investments in group practices; referral arrangements for specialty services; and cooperative hospital service organizations.

"These new safe harbors reflect our desire to accommodate the legitimate concerns of the industry and to promote the effective and efficient delivery of health care services to federal health care program beneficiaries," Inspector General June Gibbs Brown said. "The final regulation responds to many of the concerns raised by the industry in response to our original proposals, as well as our annual solicitation for new safe harbor suggestions."

On the books since 1972, the federal anti-kickback law prohibits anyone from knowingly and willfully receiving or paying anything of value to influence the referral of federal health care program business. Violations of the law are punishable by up to five years in prison, criminal fines up to $25,000, administrative civil money penalties up to $50,000, and exclusion from participation in federal health care programs.

"The federal anti-kickback statute is the guarantor of objective medical advice for federal health care program beneficiaries and helps ensure that providers refer patients based on the patients' best medical
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Because the law is broad on its face, concerns arose among health care providers that some relatively innocuous -- and in some cases even beneficial -- commercial arrangements are prohibited by the anti-kickback law. Responding to these concerns, Congress in 1987 authorized the Department to issue regulations designating specific safe harbors for various payment and business practices that, while potentially prohibited by the law, would not be prosecuted.


The 1991 safe harbors addressed the following types of business or payment practices: investments in large publicly held health care companies; investments in small health care joint ventures; space rental; equipment rental; personal services and management contracts; sales of retiring physicians' practices to other physicians; referral services; warranties; discounts; employee compensation; group purchasing organizations; and waivers of Medicare Part A inpatient cost-sharing amounts. The 1992 interim final safe harbors, which were issued in final form in 1996, addressed the following practices in managed care settings: increased coverage, reduced cost-sharing amounts, or reduced premium amounts offered by health plans to beneficiaries; and price reductions offered to health plans by providers.

The new final rule clarifies aspects of the original safe harbors for large and small entity investments; space rental; equipment rental; personal services and management contracts; referral services; and discounts. The intent of the clarifications is to make the regulations easier for the industry to understand and apply to particular factual circumstances.

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Note: A fact sheet highlighting aspects of the new regulatory safe harbors is available on the Office of Inspector General Web site at oig.hhs.gov. After the new rules are published in the Federal Register, scheduled for Nov. 19, 1999, the rules will be available on the Office of Inspector General Web site.
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