

Part B Insider (Multispecialty) Coding Alert

COMPLIANCE: Come Clean, Or We'll Fight Dirty, OIG Warns

Your deals with hospitals could be under the lens soon

The **HHS Office of Inspector General** is looking into your hospital relationships, but it's offering you a chance to come forward with potential violations before the hammer comes down.

In an "Open Letter" to providers displayed on its Web site (www.oig.hhs.gov) the **OIG** hints that if you self-disclose problems, you'll end up owing less money. You'll may also escape having a rigorous Corporate Integrity Agreement (CIA). Instead, the **OIG** will just certify that your compliance plan is adequate.

The heat is on: The **OIG** and other federal bloodhounds are investigating more and more suspect relationships between doctors and hospitals or other providers, notes attorney **David Glaser** with **Frederickson & Byron** in Minneapolis.

Suspect deals: If your physician is renting office space from a hospital and isn't paying the market rate, then he or she could have a legal nightmare waiting to happen, the **OIG** warns.

Another pitfall is a deal where the facility pays your doctor a salary to serve as its medical director, says Glaser. Any recruiting bonuses the hospital pays your doctor may also attract scrutiny.

Example: One of Glaser's clients, a physician group, had a relationship with a device manufacturer that seemed to be on the up-and-up. But later, the physicians started questioning the manufacturer's intentions, so they ended the partnership and repaid to Medicare a third of the payments they'd received. They kept the other two-thirds because the arrangement had been expensive to enter into.

Things seemed to be settled--until a disgruntled former colleague turned them in, says Glaser. The government decided that refunding the money wasn't enough. The physicians should have gone through self-disclosure. Now the government wants the physicians to enter into a CIA, which would cost over \$100,000 to put in place.

Since the physicians' intentions were pure when they originally received the money, they didn't violate the anti-kickback statute, which depends on intent, Glaser argues.

Proceed with caution: You should only report problems to the **OIG** if you believe someone intentionally violated the law, Glaser argues. Figuring out whether a deal was downright illegal, instead of just "looking bad," requires a detailed analysis of the intent of the parties and the value of the transactions, he adds.