

## **OIG On Financial Arrangements**

**Richard P. Kusserow | September 2024**

The majority of healthcare fraud enforcement actions by the Department of Justice (DOJ) and Office of Inspector General (OIG) have been based on financial arrangements with referral sources that violated the federal Anti-Kickback Statute (AKS). With a few exceptions, OIG Corporate Integrity Agreements (CIAs) also were based upon the AKS. As such, Compliance Officers should consider this their top compliance risk priority. The November 2023 OIG “[General Compliance Program Guidance](#)” underscored the importance of this issue. Following the introductory message, it jumps right into the AKS with 1300 words addressing the issue (pages 10 through 14). In addition, there is another section later in the Guidance regarding Financial Arrangements Tracking. The OIG recognizes that it is a common business practice for health care organizations to enter into arrangements with physicians and others in a position to influence the referral of business. Arrangements may include medical directorships, on-call agreements, leases, and joint ventures. Essentially, there are four pillars supporting proper physician arrangements. These include (1) proper evidencing of need for the services; (2) how the decision is made as to who to engage; (3) the four corners of the Agreement that addresses AKS and Stark standards (e.g., FMV and Commercially Reasonable Services); and (4) evidence of physician compliance with the terms of the Agreement. Although the terms of the Agreements can be discussed by Compliance, that element can be the responsibility of Legal Counsel.

These arrangements must be aligned with fair market value (FMV) and commercial reasonableness standards. The rationale for arrangements should also be documented. The OIG noted that although Legal Counsel may be involved in the initial structuring and drafting of these agreements, ongoing monitoring and independent auditing of compliance with the terms and conditions outlined in the agreements remains equally important. As such, they advise having a centralized system to track arrangements to ensure (a) proper supporting documentation for the arrangements is maintained; (b) regular compliance reviews are conducted; (c) market value assessments are performed and updated routinely as appropriate; and (d) evidencing meeting contract terms. An effective tracking system that undergoes periodic independent Arrangement Reviews goes a long way in preventing violations and mitigating potential liability under Federal fraud and abuse laws. It is advisable to develop an audit guide for the compliance office staff for auditing for ongoing monitoring and auditing of arrangements and implement a training program for the compliance staff on how to conduct the reviews.

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### **About the Author**

Richard P. Kusserow established Strategic Management Services, LLC, after retiring from being the DHHS Inspector General, and has assisted over 2,000 health care organizations and entities in developing, implementing and assessing compliance programs.