OIG’s Possible Sanctions for Exclusive Service Agreements

[fusion_text]Exclusive service agreements are designed to establish a loyal relationship between two partners. Specifically, these agreements act as covenants providing that, in the case of a service provider and a user, the user will procure services from the provider, and no one else. Recently, however, an exclusive service agreement proposal between a medical laboratory and physician practices came under scrutiny by the federal government. In fact, that agreement may result in sanctions levied directly by the Department of Health and Human Services Office of the Inspector General (OIG). **Lab Proposes Strict Agreement** The agreement in question was proposed by an unidentified regional medical laboratory to certain physician practices, according to an advisory opinion offered by the OIG. The lab, which operates 45 patient service centers, alleged that just over two-thirds of its clients have between 10 and 40 percent of patients with insurance plans that only cover costs for tests run at a certain lab, and none else. The proposal offered a solution: under the proposed exclusive service agreement, the lab would provide free services to those patients with the aforementioned insurance plans, and bill the others accordingly, those with private or federal healthcare program coverage. In exchange, per the nature of an exclusive service agreement, the laboratory would secure all of the business from the practices. **OIG Steps In** While the proposal would have ostensible benefits for the medical laboratory, it quickly came under fire from the OIG. Overall, the OIG declared that the proposal violates the Anti-Kickback Statutes (AKS) and goes against the prohibition on charging Medicaid or Medicare excessively. To elaborate, the OIG declared that the proposal involves federally payable services and referrals, and that the physicians received the benefit of working with only one lab, and with a free interface, one that often carries with it significant maintenance costs. As such, the OIG asserted that these incentives could be considered a form of payment for referral of federal healthcare business. But how, exactly, does the proposal excessively charge the Medicaid or Medicare programs? Under the agreement, some patients would be charged nothing for services, while those covered by Medicare or Medicaid would be billed at regular rates. This, in reality, amounts to a two-tiered system, one in which the federal insurance programs would be charged greater amounts than other, private insurers. For now, the OIG will continue to examine the specifics of this proposal, as well as data from the physician practices, to determined whether or not administrative sanctions are reasonable in this situation. And this should act as somewhat of a warning to those considering an exclusive service agreement; while these covenants may provide significant benefits for both parties, doing so against stated rules could certainly provoke the ire of regulatory agencies with the state and federal governments. **You may need help** As with many areas of health care laws, your agreements should be reviewed to make sure you are not in violation of Federal health care laws. If you need such reviews, please feel free to contact our Kansas City based Health Care Attorneys to learn how we might be able to help you. Image: Thinkstock/BernardaSv *This article is very general in nature and does not constitute

legal advice. Readers with legal questions should consult with an attorney prior to making any legal decisions.[/fusion_text]