



OIG NEWS

Office of Inspector General
330 Independence Ave., SW
Washington, D. C. 20201
(202) 619-1343

For Immediate Release
April 23, 2003

ADVISORY BULLETIN TARGETS SUSPECT CONTRACTUAL JOINT VENTURES

The HHS Office of Inspector General (OIG) today issued a special advisory bulletin that cautions health care providers serving Medicare and Medicaid beneficiaries against entering into joint venture arrangements that reward the provider for improper patient referrals in violation of the federal anti-kickback statute.

The bulletin focuses on certain complex contractual joint ventures that, at their core, use a combination of “shell” entities and subcontracting arrangements with freestanding providers of related health services, such as durable medical equipment or home oxygen suppliers, to disguise illegal kickbacks.

The OIG believes these arrangements have been proliferating, and that they potentially violate the anti-kickback statute, which makes it unlawful for anyone to knowingly and willfully solicit, receive, offer, or pay anything of value to induce referrals of items or services payable by a federal health care program. Among other concerns, kickbacks may adversely impact the programs because they distort medical decision-making, cause overutilization, increase costs, and result in unfair competition by freezing out competitors unwilling to pay kickbacks.

The bulletin offers several examples of suspect contractual arrangements that could provide the basis for law enforcement action. Characteristics of potentially problematic arrangements include: 1) the owner is expanding into a related business that is wholly dependent on patient referrals from the existing business; 2) the owner neither operates nor commits substantial resources to the new business; 3) absent the contractual arrangement, the contracting entity would be a competitor; and 4) payments to the owner are based on the owner’s referrals to the new business. Providers are warned that the presence of any of these or similar elements in a contractual joint venture potentially indicates a prohibited arrangement.

Violations of the anti-kickback statute constitute a felony punishable by a maximum fine of \$25,000, imprisonment up to five years, or both. The OIG may also exclude violators from doing

business with Medicare and the other federal health care programs, and impose civil money penalties up to \$50,000.

The bulletin is another in a series of informational alerts periodically issued by the OIG to provide guidance to the health care industry to prevent fraud and abuse and promote high standards of ethical and lawful conduct. The new special advisory bulletin – *Special Advisory Bulletin on Contractual Joint Ventures* – will be published in the *Federal Register*. It also is available on the Office of Inspector General’s Web site at <http://oig.hhs.gov/fraud/docs/alertsandbulletins/042303SABJointVentures.pdf>