KRIEG DEVAULT

Insights

Why Are You Really Here? Government Increasingly Skeptical of Paid Physician Speaking Engagements

March 12, 2021

By: Brandon W. Shirley and Marc T. Quigley

The Office of Inspector General ("OIG") is skeptical of physician speaking engagements paid by pharmaceutical and medical device companies. In a recent **Special Fraud Announcement**, the OIG issued warnings to physicians who are not employees of sponsoring companies and are paid to espouse the benefits of products or devices to other health care professionals. The OIG sees no legitimate value in such programs and those participating in them may be subject to criminal prosecution under the Anti-Kickback Statute ("AKS"). In light of this announcement and the OIG's focus on physician speaking engagements, compliance officers should review and update their compliance programs and re-train their physicians as needed to avoid incurring potential AKS liability.

The OIG's Special Fraud Announcement makes three noteworthy comments for paid physician speaking engagements.

1. There is a strong presumption of intent to violate the AKS when a physician is given generous compensation to speak at a program under circumstances that are not conducive to learning and to audience members who have no legitimate reason to attend.
2. All participants at such events, the speaker, the sponsoring company, and attendees who accept food and drink and other benefits, may be incur AKS liability depending on the circumstances.
3. Physicians should avoid any compensation arrangement with another company if the only basis for the relationship is the physician's ability to prescribe or generate business for the sponsoring company.

While the OIG emphasized that not all physician speaking engagements are problematic, physicians should be careful to avoid extravagant meals and benefits connected to such speaking engagements. Physicians should also disclose such arrangements to their compliance officers to ensure such arrangements avoid the types of issues raised in the Special Fraud Announcement and are consistent with your company's gifts and gratuities policies. Compliance officers should review and update these gifts and gratuities policies to align with the Special Fraud announcement and make those policies and OIG publications available to its physicians through special or annual compliance training.

If you have questions about your organization's compliance program or this alert, contact **Brandon W. Shirley** or **Marc T. Quigley**.