

TYPES NOT MAPPED YET December 16, 2020 | TTR not mapped yet | Nicole K. Jobe

# OIG issues special fraud alert on health care speaker programs

Last month, the Department of Health and Human Services Office of Inspector General (“OIG”) issued a [Special Fraud Alert](#) regarding fraud and abuse concerns related to speaker programs offered by pharmaceutical and medical device companies. Over the last three years, these companies have paid nearly \$2 billion to health care providers for these events. Additionally, the Department of Justice in conjunction with the OIG has investigated and resolved numerous cases of alleged violations of the anti-kickback statute in relation to these programs.

The anti-kickback statute prohibits the offer, solicitation, receipt, or payment of remuneration to induce or reward referrals of items and services that are paid by federal health care programs. OIG investigations revealed that health care providers often receive generous compensation to speak at programs that offer minimal educational value to other health care providers. The OIG expressed concern that one purpose of these programs is to induce or reward referrals for the sponsoring company’s products.

In the alert, the OIG defined speaker programs as “company-sponsored events at which a physician or other health care professional makes a speech or presentation to other health care professionals about a drug or device product or a disease state on behalf of the company.” The OIG provided the following list of factors that could potentially indicate a program is in violation of the anti-kickback statute:

- The company sponsors speaker programs where little or no substantive information is actually presented;
- Alcohol is available or a meal exceeding modest value is provided to the attendees of the program (the concern is heightened when the alcohol is free);
- The program is held at a location that is not conducive to the exchange of educational information (e.g., restaurants or entertainment or sports venues);
- The company sponsors a large number of programs on the same or substantially the same topic or product especially in situations involving no recent substantive change in relevant information;
- There has been a significant period of time with no new medical or scientific information nor a new FDA-approved or cleared indication for the product;
- Health care providers attend programs on the same or substantially the same topics more than once (as either a repeat attendee or as an attendee after being a speaker on the same or substantially the same topic);
- Attendees include individuals who don’t have a legitimate business reason to attend the program;
- The company’s sales or marketing business units influence the selection of speakers, or the company selects health care provider speakers or attendees based on past or expected revenue that the speakers or attendees have or will generate; and



- The company pays health care provider speakers more than fair market value for the speaking service or pays compensation that takes into account the volume or value of past business generated or potential future business generated by the health care providers.

The OIG pointed out that this is not an exhaustive list of factors that are concerning to the OIG, nor is the presence or absence of any one factor determinative of whether a program violates the anti-kickback statute. However, pharmaceutical and medical device companies should carefully consider the risks involved before sponsoring these types of events.

#### authorsTest

**nicole**

Nicole K. Jobe