

OIG Guidance on Financial Arrangements

Richard P. Kusserow | December 2023

The vast majority of healthcare fraud enforcement actions by the DOJ and OIG are based on financial arrangements with referral sources that violate the federal Anti-Kickback Statute (AKS). With few exceptions, OIG Corporate Integrity Agreements (CIAs) result from AKS settlement agreements negotiated by the DOJ. As such, Compliance Officers should prioritize this as their top compliance risk. The November 2023 new OIG [“General Compliance Program Guidance”](#) underscores the importance of this issue. After the introductory message, the guidance jumps to 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 standard business practice for health care organizations to enter arrangements with physicians and others in a position to influence the referral of business. Arrangements may include medical directorships, on-call arrangements, leases, and joint ventures. In doing so, these arrangements must comply with AKS and Stark laws with alignment with fair market value and commercial reasonableness standards. The rationale for arrangements should also be documented.

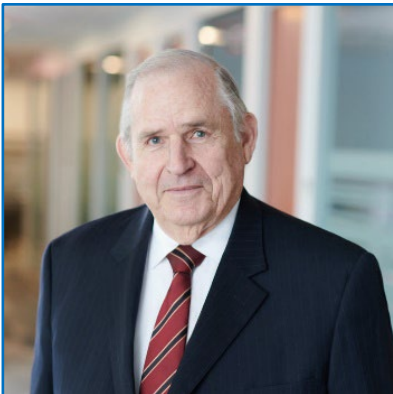
Structuring and Tracking Financial Arrangements

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 is maintained, (b) regular legal reviews are conducted, (c) market value assessments are performed and updated routinely as appropriate, and (d) accounting for compliance with contract terms. An effective tracking system that undergoes periodic [independent Arrangement Reviews](#) prevents violations and mitigates potential liability under Federal fraud and abuse laws. The Review should address the following questions:

1. Are there adequate policies/procedures for establishing a physician arrangement?
2. Is there a documented medical need and justification for an arrangement?
3. Has the physician selection process been properly evidenced?
4. Is there a standardized process for documenting “Fair Market Value?”
5. Has the standard for “commercially reasonable services” been established?
6. Are all the essential contractual terms and conditions addressed?
7. Is there a separate file to support and document each physician arrangement?
8. Are there measurable performance standards required before payments are made?
9. Are there internal controls for accounting and documentation of physician services?
10. Have physician arrangements been made part of ongoing monitoring and auditing?

See also [50 Questions to Ask When Assessing Physician Compliance Arrangements](#)

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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.