



Transparency Matters

Over the past few years, members of Congress, state legislators, federal regulators and individual hospitals have increased attention on potentially illegal payments made to physicians by drug and device companies. It is in every hospital's best interest to ensure transparency in its purchasing decisions.

Below is a summary of recent developments in this area and information on how to insulate your purchasing decisions from undue influence.

What is a kickback?

Under the *Federal Healthcare Anti-Kickback Act*, it is a criminal offense to solicit or receive any remuneration intended to induce the purchase, order, or recommendations of the purchase or order of items reimbursable by a federal healthcare program.

Importantly, both sides of an impermissible kickback transaction – the company *and the physician/hospital* – are subject to serious penalties, including exclusion from CMS reimbursement.

Who is taking action?

Some examples include:

- September 2007: The Department of Justice settled with the country's five largest orthopedic device makers for \$311 million over allegedly inappropriate financial payments made to physicians;
- August 2008: Massachusetts passed a new law establishing a sales and marketing code of conduct and requiring companies to annually report to the government any payment over \$50;
- December 2008: AdvaMed updated its *Code of Ethics* to clarify what constitutes inappropriate activity between physicians and its member companies;
- January 2009: Senators Kohl and Grassley introduced the Physician Payment Sunshine Act that would create a national database of payments to physicians for any payment over \$100;
- March 2009: MedPAC recommended that Congress require disclosure of payments over \$100; direct HHS to post such disclosures in a public database; and require medical facilities to annually report any financial interest that its physicians have in the facility; and
- March 2009: The U.S. Attorney for Massachusetts confirmed that the Department of Justice plans to file civil and criminal charges against a number of surgeons because the strategy of going after the companies alone has been unsuccessful in deterring healthcare fraud.

How can you protect your hospital?

Hospitals can deter impermissible kickbacks and promote transparency in purchasing decisions by taking these steps:

1. Require physicians to periodically disclose any relationships with device companies;
2. Make such disclosures available to the public; and
3. Develop a policy whereby physicians with ties to companies are prohibited from participating in purchasing decisions.

Taking such steps puts your hospital in good company – The Henry Ford Health System, Park Nicollet Health Services, and the University of Pittsburgh Medical Center have all adopted disclosure requirements, and the Cleveland Clinic is the first institution that plans to make its disclosures publicly available.

(revised 2009)