



June 30, 2016

**OIG ALERT:**  
**Improper Arrangements Involving Home Health Services**

By: Daniel O. Carroll, Esq.

On June 22, 2016, the Office of Inspector General (OIG) issued an [alert](#) concerning the findings of recent investigations and OIG studies with respect to home health services, which it notes are vulnerable to fraud, waste and abuse. The OIG indicated that the Federal government will be stepping up its enforcement in this area. Targets of enforcement range from home health agencies (HHAs) to individual physicians to executives of home-visiting physician companies involved in schemes to defraud Medicare.

The OIG noted that recent enforcement actions involved improper arrangements between HHAs and physicians and the payment for referrals of Medicare beneficiaries disguised as compensation arrangements for services. Accordingly, the OIG reminds us that HHAs and physicians entering into compensation arrangements for services (including services of a medical director) must be certain that those arrangements are fair market value and commercially reasonable, even absent the referral relationship. In addition to violating the anti-kickback statute, the Federal government has asserted violations of other Federal laws designed to curb health care fraud and abuse. The OIG cited allegations of (a) HHAs billing for medically unnecessary nursing services provided to patients not confined to a home, (b) home-visiting physicians upcoding patient visits, and (c) physicians billing for care plan oversight services that were not actually rendered. Oftentimes, the physicians participating in these fraudulent schemes were not the patients' primary care physicians.

Whether in the home health context or in other health care settings, compensation arrangements between health care providers involving the provision of services to Medicare beneficiaries should be reviewed to ensure that the services are both reasonable and necessary and that the payments made under those arrangements are fair market value and commercially reasonable absent a referral relationship. For more information on the OIG alert or other health care legal issues, please feel free to contact any member of the firm's Health Care Law Practice Group for further discussion.

**DISCLAIMER:** This Client Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client. If someone you know would like to receive this Client Alert, please send a message to Daniel O. Carroll, Esq., a partner in the Health Care Practice Group at doc@spsk.com.

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