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the Federal Anti-Kickback Law

To: All BPHC Service Delivery Programs
National Grants and Cooperative Agreements
State Primary Care Offices
State and Regional Primary Care Associations

The enclosed guidance has been developed to alert BPHC grant-funded service delivery programs (i.e., health centers) to the basic elements of the Federal anti-kickback statute and to convey the importance of health centers structuring their activities within the parameters of this law.

If you should have any questions regarding this guidance, please contact Ms. Jeanellen Kallevang at (301) 594-4315.

/s/Phillip P. Killam for
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Enclosure

Background and Purpose

Beginning in fiscal year (FY) 1994, the following statement has been incorporated into the remarks section of each Notice of Grant Award for Bureau of Primary Health Care (BPHC) grant-funded service delivery programs (hereafter referred to as "health centers"):

"Recipients and sub-recipients of Federal funds are subject to the strictures of the Medicare and Medicaid anti-kickback statute (42 U.S.C. 1320a - 7b(b) and should be cognizant of the risk of criminal and administrative liability under this statute, specifically under 42 U.S.C. 1320 7b(b) 'Illegal remunerations' which states, in part, that whoever knowingly and willfully:

(1) solicits or receives (or offers or pays) any remuneration (including kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind, in return for referring (or to induce such person to refer) an individual to a person for the furnishing or arranging for the furnishing of any item or service, OR

(2) in return for purchasing, leasing, ordering, or recommending purchasing, leasing, or ordering, or to purchase, lease, or order, any good, facility, services or item

for which payment may be made in whole or in part under subchapter XIII of this chapter or a State health care program, shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years, or both."

In short, the anti-kickback statute applies to individuals or entities that knowingly and willfully (1) receive or solicit or (2) offer or pay remuneration (anything of value) in exchange for or as an inducement to: (a) refer an individual for the furnishing of services or (b) purchase or lease items, services, or facilities paid for by Medicare/Medicaid.

The purpose of the anti-kickback statute is to protect the Medicare and Medicaid programs from increased costs and abusive

practices resulting from provider decisions that are based on self-interest rather than cost, quality of care or necessity of services. The law seeks to prevent overutilization, limit cost, preserve freedom of choice and preserve competition.

Given these goals, the Office of Inspector General (OIG) within the Department of Health and Human Services interprets the statutory language broadly and many common practices in the health care market have been viewed as violating the law. For instance, because the statute pertains to remuneration which is solicited, received, offered or paid, "directly or indirectly, overtly or covertly, in cash or in kind," "remuneration" can take many forms. Thus, "remuneration" could exist if someone receives, at any time, something of value out of a referral or an order, purchase or lease of goods or services funded in whole or in part by Medicare or Medicaid. Unless such arrangements are structured to fit within certain "safe harbors", (i.e., transactions that might violate the statute, but as a matter of congressional or OIG policy will not be subject to prosecution) the OIG may view them as violations of the statute.

Implementation

To avoid potential conflict with the anti-kickback provisions, health centers should seek legal counsel familiar with the anti-kickback law. This is important as health centers are forming partnerships with hospitals and other providers in area-wide comprehensive delivery systems.

The trend toward development of comprehensive health service networks is likely to continue and BPHC has adopted policies supportive of health centers broadening their participation in such health care systems. Health centers will continue to be

approached by providers seeking to involve them in affiliation agreements, and health centers will of their own initiative increase efforts to establish and control or have leverage within networks (e.g., within the service area of one center, Statewide).

Managed care training covering the anti-kickback provisions is available for groups of health centers. The training is sponsored by the National Association of Community Health Centers (NACHC) and the Bureau of Primary Health Care. The specific training which includes anti-kickback is called Networking. Health centers that are interested in the training should contact their primary care association.

In September 1992, NACHC published a manual entitled "Federal Fraud and Abuse Laws: A Handbook for Community and Migrant Health Centers" which summarizes the law and safe harbor rules and includes a reprint of relevant statutory and regulatory provisions (except a managed care safe harbor which was issued subsequent to publication). Health centers should obtain the

manual and become familiar with it. Copies of the handbook can be obtained by writing directly to NACHC . In addition, the OIG issues fraud alerts in which it describes practices or arrangements that it views as particularly suspicious and which are likely to be viewed as violative of the anti-kickback law. Health centers should become familiar with the OIG's fraud alerts, particularly the three recent alerts concerning hospital incentives to physicians, prescription drug marketing practices, and clinical laboratory arrangements. (OIG republished these alerts plus two earlier alerts in the December 19, 1994, Federal Register--59 FR 65372-65378.)

Be advised that this letter is to alert you of potential issues regarding the Federal anti-kickback statute. This information is not legal advice and is in no way a substitute for review of your

