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HEALTHCARE LAWYERS

Kickbacks in the Age of The Internet

Michael “Akiva” Newborn authored the article, “Kickback in the Age of The Internet,” published today on California Healthcare News.

From the article…

> Historically, it has been common practice for businesses to enter into referral relationships to boost business and increase profits. These mutually beneficial relationships can be invaluable marketing tools for growing a business’ customer base without having to expend large sums on direct advertising and marketing campaigns. But in the healthcare industry, referral relationships can come at a high cost. Consider the following scenario: Dr. A approaches a related specialist, Dr. B, and offers a cut of the profits for each patient Dr. B sends Dr. A’s way. Most practicing healthcare professionals today are acutely aware of this type of kickback arrangement and the legal danger it poses. But in the age of the internet, kickbacks can take on new and more complicated forms that may escape the notice of healthcare professionals.
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> Passed in 1972, the federal Anti-Kickback Statute prohibits healthcare professionals from exchanging anything of value to induce or reward another healthcare professional or even lay person, to direct patients to their practice.[1] This legislation was dually aimed at protecting patients and federal healthcare programs from fraud and abuse. A single violation of this law carries criminal liability, which includes up to $25,000 in fines and five years’ imprisonment.[2] A violator can also be excluded from participating in federal healthcare programs such as Medicare, which is often a profitable source of revenue for medical practices.[3]
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> Healthcare professionals who participate in kickback arrangements may likewise run afoul of state anti-kickback laws. Most states have similarly promulgated anti-fee-splitting laws, prohibiting healthcare professionals from splitting patient fees with lay people or other healthcare professionals not directly involved in the patient’s care. Pursuant to California’s Business & Professions Code Section 650(a), for example, a physician may not accept a commission for referring patients to any “person,”[4] which is defined as “an individual, firm, partnership, association, corporation, a limited liability company or cooperative association.”[5] Significantly, there is no indication in the statute that the “person” must be associated with healthcare. Thus, according to state provisions like California’s, healthcare providers may not apportion any part of a patient fee to, for example, the provider’s commercial landlord or marketing agency.
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> The risks are significant enough to make healthcare professionals vigilant and balk at any business relationships that resemble kickbacks or fee-splitting. But the internet has broadened the universe of business relationships and marketing techniques, which, in turn, has created new forms of kickback and fee-splitting arrangements that may slip under the radar of the average healthcare professional.

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