

ALERTS | 05.19.2026

OIG Scrutinizes HCP Consulting Arrangement in Advisory Opinion 26-10

OIG posted an unfavorable advisory opinion today regarding a medical device company's proposed consulting arrangement with HCPs.

Under the proposed arrangement, the company sought to enter into ongoing consulting agreements with HCPs pertaining to a product line of the company, beyond a specific product in that product line. The HCP consultants would provide teaching, training, and proctoring services, as well as ongoing consulting support for a minimum number of hours per year. In exchange, the medical device company proposed to compensate HCPs through quarterly payments calculated as a specified percentage of sales within the relevant product line (excluding products personally used by the HCP consultant among other exclusions). If an HCP consultant failed to meet the minimum time commitment or did not provide satisfactory services, compensation would revert to a traditional hourly rate consistent with FMV. An evaluation panel at the company would be convened to provide a qualitative assessment of each HCP consultant's contribution, although the composition of the evaluation panel was not described. In addition, the company's Compliance function would play a monitoring role by reviewing records of the HCPs' consulting activities.

OIG concluded that the proposed arrangement posed a high risk under the federal AKS, characterizing it as a "payment-for-referrals" scheme. In particular, OIG emphasized longstanding concerns such as skewing clinical decision-making, patient steering, promoting unfair competition, encouraging inappropriate utilization, and increasing costs to federal health care programs.

Although the outcome may not be particularly surprising given the sales-based compensation methodology, the advisory opinion provides useful insight into OIG's analysis of more common features of HCP consulting arrangements. These include the use of ongoing engagements that are not structured or tied to a specific meeting or discrete deliverable, the provision of training and proctoring services by HCPs, and reliance on third-party consultants to establish fair market value. Overall, the advisory opinion underscores that HCP consulting arrangements, while not inherently problematic, may raise heightened scrutiny when structured in such a way that encourages HCPs, and encourages them to steer others, to utilize a company's products, particularly if a competitor's products may be more clinically appropriate.

Notably, OIG highlighted that HCP consulting arrangements can serve legitimate and valuable purposes when appropriately structured to reduce AKS risk.

Advisory Opinion 26-10 may serve as a helpful reference when evaluating consultant annual plans and needs assessment forms, particularly for strategic counsel boards/ongoing advisory panels.

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