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In a Changing Landscape, Kickback Risks Are Familiar; 'Follow the Money'

By Nina Youngstrom

For the most part, "the breeding grounds" for kickbacks—including personal services arrangements (PSAs) and free staffing—haven't changed, other than the addition of private equity, according to Catherine Martin, chief compliance officer at Luminis Health in Maryland, and Meredith Williams, a senior counsel at the HHS Office of Inspector General (OIG). But the backdrop is different and that has implications for compliance monitoring.

"We are coming out of the pandemic and the landscape for health care has changed significantly," said Martin, a former OIG senior counsel, at the Health Care Compliance Association's Compliance Institute April 24.[1] "As things evolve and everyone is talking about compliance in this new era, you have to be cognizant of the risks." They include risks introduced by telehealth, private equity and value-based care.

In the kickback arena, that means watching where the money flows. "I have always been someone who draws out relationships and looks to see where we are interacting with federal health care programs," Martin said. "You really need to follow the money and the referrals and understand who the players are and where there's risk." Although that hill is harder to climb because of the increasingly complicated nature of health systems, it's important to build defenses against kickbacks.

Martin and Williams walked through five breeding grounds of kickbacks and suggested compliance solutions. First up are PSAs, including medical director and on-call coverage agreements. "Stacking" or overlapping medical director agreements are a common risk area where physicians are paid for services that aren't provided or needed, Williams said. Another risk area to watch is per-click or per-payment arrangements, she noted. OIG expressed its concerns about them in a 2022 advisory opinion (22-09).[2]

The requestor was a lab network that proposed to pay contracted hospitals on a per-patient encounter to collect and process lab specimens. "We didn't approve it because it had too much risk," Williams explained. The per-encounter method is "inherently tied to the number of patients the hospital referred to the lab. If you're analyzing this type of arrangement, go back and look at advisory opinion 22-09."