Warning Issued on Doctors' Stakes in Device Firms

KELLI KENNEDY - Associated Press - Associated Press

Federal health officials issued a rare warning Tuesday about doctors' ownership of shares in medical device companies that allow them to profit from performing surgeries with those products.

The Depart of Health and Human Services' inspector general said the increasingly common practice is "inherently suspect" and may violate anti-kickback laws, according to the special fraud alert. The agency has only issued a handful of these national fraud alerts in the past 20 years and the warning sends a strong message to doctors, medical device distributors, hospitals and others in the medical industry.

The alert warns that these doctor-medical device partnerships could influence doctors to perform medically unnecessary procedures, perform such procedures too often or use implants of inferior quality or that are not best suited for the procedure.

The U.S. Senate Finance Committee warned of an uptick in these partnerships in 2011, saying they were proliferating in at least 20 states, especially in rural areas. The committee, chaired by Sen. Max Baucus, D-Mont, noted the number of spine refusions and total joint surgeries increased significantly in areas after these companies were established.

"Patients should have peace of mind that a doctor's recommendation for treatment or care is in their best interest and isn't just a way of making money," Sen. Orrin Hatch, R-Utah, said in a statement following a 2011 committee hearing. "The financial incentives created by these entities set a dangerous precedent that ... can lead to serious overutilization and force unnecessary, invasive procedures for patients."

Here's how the partnerships, known as physician-owned distributorships, work: Doctors purchase ownership shares in a company that, in turn, purchases or distributes the medical devices the doctor uses in surgery. For example, a cardiologist may purchase a share in a company that manufactures and distributes pacemakers, a device which a cardiologist might frequently use in surgery.

Lawmakers worry the arrangement gives physicians, who also choose what medical devices they implant in patients, a share in the profits generated by the sale of such devices.

The committee was especially worried that doctors taking part in these arrangements may be inappropriately billing the taxpayer funded Medicare and Medicaid programs.

Advocates for the companies say the arrangements save money and create competition, but the inspector general did not find enough evidence of that and instead noted risks for additional costs.

Los Angeles-based attorney Brad Tully said each company has to be evaluated on an individual basis.

"If it's not structured right, things could go wrong. I don't think that means they're inherently suspect," said Tully, who has represented these companies in the past.

The inspector general plans to release a report later this year measuring the frequency of spinal fusion procedures at hospitals that use doctor-medical device companies compared to hospitals that don't use these companies.

It's unclear what will happen from there. Despite significant scrutiny of the industry, there's been little enforcement activity against physician-owned distributorships. Lawmakers could recommend statutory changes or federal health officials could make minor revisions on their own.

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