

Report on Medicare Compliance Volume 28, Number 29. August 19, 2019 Risk Spectrum: The Relative Risks of Marketing Under the Anti-Kickback Statute

Some types of marketing pose greater risks than others under the Anti-Kickback Statute (AKS), says David Blank, a former senior attorney with the HHS Office of Inspector General (“CEO Settles CMP Case After Hospital FCA Settlement; OIG Cites Individual Accountability,” *RMC* 28, no. 29). “Generally, accurate and non-deceptive print advertising in general circulation media (such as periodicals or broadcast media) does not raise AKS concerns,” says Blank, with Quarles & Brady in Washington, D.C. “The level of scrutiny increases when the marketing or promotional activity focuses on specific items, services, or individuals. Marketing that involves direct contact with a physician in a position to order items that are paid for by a federal health care program is subjected to a higher level of scrutiny because of the potential impact on independent medical decision making. Think of a pharmaceutical or device manufacturer sales representative going to give a product pitch to a potential referral source.” Contact Blank at david.blank@quarles.com.

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