

CEP Magazine – April 2021 Revisit your speaker program policies to avoid abusive practices

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In November 2020, the US Office of Inspector General (OIG) released a special fraud alert that highlighted the fraud and abuse risks associated with “speaker programs.”^[1] Special fraud alerts provide the OIG with an opportunity to notify industries of certain abusive practices they plan to pursue and prosecute. The OIG’s focus on speaker programs has stemmed from an increased number of investigations where remuneration was offered and paid to healthcare professionals (HCPs). In July 2020, a settlement with Novartis Pharmaceuticals for \$678 million dollars involved operating sham speaker programs where Novartis paid HCPs \$100 million dollars to induce prescriptions of Novartis’ drugs.^[2] With an increased focus on speaker programs, it is important to understand the impact that the OIG’s new guidance may have on your organization and how to effectively guide organizational change to avoid potential risks associated with your organization’s speaker program.

What are speaker programs?

According to the OIG’s special fraud alert, speaker programs are defined as “company-sponsored events at which a physician or other health care professional (collectively, ‘HCP’) makes a speech or presentation to other HCPs about a drug or device product or a disease state on behalf of the company.” A speaker program is a tool used by the sales department to help build relationships between your organization and HCPs. The fear surrounding speaker programs is the relatively thin line between an inducement, as defined by the Anti-Kickback Statute (AKS),^[3] or an appropriate transfer of value, as defined by the Affordable Care Act.^[4] Typically, an organization pays an HCP to speak on behalf of the organization at an event and provides remuneration (meals, alcohol, etc.) to attendees as well.

What led to the OIG’s alert?

According to the Open Payments database,^[5] drug and device companies have paid HCPs nearly \$2 billion for compensation for services other than consulting in 2017, 2018, and 2019. Elevated investment in HCPs by drug and device companies have resulted in an interest in speaker programs by the OIG, but the increased use of speaker programs as a tool to provide remuneration to HCP speakers and HCP attendees has put a target on speaker programs as a whole. Also, as mentioned in the special fraud alert, the OIG has investigated and resolved a number of fraud cases involving allegations wherein remuneration was provided in connection with speaker programs. Per the special fraud alert, examples include:

- Selecting high-prescribing HCPs to be speakers as a reward;
- Remuneration that is conditional, based on sales targets;
- Holding events in a manner not conducive to an educational presentation;

- Holding events at high-end restaurants where expensive meals and alcohol are served; and
- Allowing HCPs' family members and friends as attendees when there is not a legitimate business reason for doing so.

Due to the number of investigations conducted by the OIG and the high dollar amounts provided to HCPs related to speaker program activities, OIG has stated that there is skepticism surrounding the educational value of these programs.

Specifically, there was a lack of value found in the current platform of speaker programs. Generally, HCPs received generous compensation to speak at programs offered under circumstances that are not conducive to learning or to speak to audience members who have no legitimate reason to attend. HCPs that receive remuneration from a company are more likely to prescribe or order that company's products. HCPs can be educated by other means.

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