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## IMPORTANT NOTICE REGARDING NON-COMPLIANCE INDUCEMENTS

Background and regulations:

Business and Professions Code Section 650 states in part that the: ***“ . . .offer, delivery, receipt, or acceptance by any person licensed under this division of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration . . . as . . . compensation or inducement for referring patients . . . to any person . . . is unlawful.”***

Violation of the above is punishable by imprisonment, a fine of up to \$50,000, or both. This law applies to referrals by physicians, dentists, nurses, and other health professionals including chiropractors. The intent of the law is to protect the public from excessive health care costs, from referrals based on considerations other than the best interests of the patients, deceit and fraud, and payment to a licensee where professional services have not been rendered.

Possible scenarios:

1. Phlebotomy personnel are placed in a physician's office by a laboratory. These personnel are either employed by the laboratory or are contracted by the laboratory directly or indirectly through a third party. In this scenario the phlebotomy services are solely for the physician's patients and not open to the public, and the laboratory may or may not be leasing the premises occupied by the phlebotomist from the physician at a fair market value.

This is considered an unlawful inducement, regardless of whether the laboratory is paying fair market value to the physician for the leased premises, because the services provided are solely for the physician's patients and not open to the general public. If the premises are not being leased for fair market value, this would further support an unlawful inducement violation.

2. An employee of a physician is also paid by a laboratory as an “independent” phlebotomist to collect specimens for the physician's patients.

After the issuance of the federal OIG Special Fraud Alert issued June 25, 2014, a laboratory has changed its practices and now enters into a contractual arrangement directly with an individual, who is a member of a physician's office staff, to provide phlebotomy services to the laboratory. The individual provides the phlebotomy services on-site in the physician's office. The individual remains an employee of the physician's office and simultaneously receives payments directly from the laboratory as an independent contractor to the laboratory. In some circumstances the physician reduces the salary or compensation to that individual when such an arrangement is in place.

This appears to be an inducement as the laboratory is conferring a benefit upon the physician by paying a portion of the compensation of the physician's employee. It is an inducement regardless of whether the laboratory is paying fair market value to the physician to lease the space utilized by the phlebotomist.