# Regulating Physician-Owned Distributorships

A recent article in Modern Healthcare gives necessary attention to Physician

Owned Distributorships, or “PODs,” which are companies owned by physicians that sell medical devices to hospitals and outpatient surgery centers. In many situations, the POD’s physician owners are the same physicians who use the devices the facility purchases from the POD. **Special Fraud Alert: POD Kickbacks** In 2013, the U.S. Health and Human Services Department announced the discovery of a correlation between an increase in the number of surgeries using a medical device by a particular doctor, and an increase in hospital purchases of that device by a POD in which the doctor has invested. For this reason, the Office of the Inspector General released a special fraud alert on PODs. The fraud alert highlighted the potential application of the antikickback statute (“AKS”) to PODs This report a emphasized that the AKS makes it a “criminal offense to knowingly and willfully offer, pay, solicit, or receive any remuneration to induce or in return for, referrals of items or services reimbursable by a Federal health care program.” **The First Lawsuit** The Government has since filed its first lawsuit against a POD showing that POD relationships have become an enforcement priority. The lawsuit, filed in the U.S. District Court of Los Angeles, claims Reliance Medical Systems (“RMS”) “violated the anti-kickback statute when RMS submitted claims to Medicare that included illegal payments.” RMS, a Utah company operating 14 POD’s, is fighting allegations of a failure to disclose physicians’ investment in the PODs. This issue is something to which all hospitals should be paying close attention. As Modern Healthcare advised, “hospitals reluctant to establish more stringent policies around conflicts of interest between physicians and device companies or those organizations unaware of such relationships now face a higher risk of patient lawsuits, as well as government investigations.” **Facility Policies** POD’s are not entirely negative. For example, PODs can lower expenses by cutting out sales costs, and can allow the physicians who do invest in medical devices to collaborate with others, thus encouraging innovation. However, increased costs to facilities of medical devices through overutilization or price of a new innovation is a real risk from PODs. The overutilzation may lead to patient lawsuits for unnecessary surgeries. Further, as of September 2014, the Physician Payment Sunshine Act has made available a public, searchable database on POD payments made to investors, managed by the Centers for Medicare and Medicaid Services (“CMS”). By April 2015, Congress and all 50 states will receive annual reports from CMS based on aggregate information collected from the database. **Facility Next Steps** Hospitals and outpatient surgery centers should put a policy in place, either explicitly limiting physician investment in devices used in surgeries performed by the physician who invested in a company, or requiring disclosure to the facility and to patients of the physician’s investment. Our Health Care Attorneys are ready to help review or create your facility’s policies relating to PODs to facilitate your compliance. You can call any of our health care lawyers at 816-421-4460. Image: Thinkstock/Medioimages/Photodisc *This article is very general in nature and does not constitute legal advice. Readers with legal questions should consult with an attorney prior to making any legal decisions.