year budget period, the applicant should request a one-year project period only. A second year budget will not be granted if the student has graduated by the end of the first year. Applications for continuation grants will be entertained in the subsequent year on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The maximum Federal share shall range between $10,000–$20,000 for the first-year budget period or a maximum of $40,000 for a two-year project period.

Matching Requirements: There are no matching requirements.

Anticipated Number of Projects to be Funded: It is anticipated that between 5 and 10 projects will be funded with an unspecified mixture of master's-level and doctoral level applicants. No university will be funded for more than one candidate, unless there are no other approved applications. Applications from the master's-level students will be evaluated separately from the applications form doctoral-level students.

Criteria for Priority Areas 1.01 and 1.02

Reviewers will consider the following factors when assigning points.

1. Results or Benefits Expected—25 points

- The research questions are clearly stated.
- The extent to which the questions are of importance and relevance for low-income children's development and welfare.
- The extent to which the research study makes a significant contribution to the knowledge base.
- The extent to which the literature review is current and comprehensive and supports the need for the study, the questions to be addressed or the hypotheses to be tested.
- The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.

2. Approach—40 points

- The extent to which the research design is appropriate and sufficient for addressing the questions of the study.
- The extent to which child outcomes are the major focus of the study.
- The extent to which the planned research specifies the measures to be used and the analyses to be conducted.
- The extent to which the planned measures are appropriate and sufficient for the questions of the study.
- The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques and advance the state-of-the-art.
- The extent to which the analytic techniques are appropriate for the question under consideration.
- The extent to which the proposed sample size is sufficient for the study.
- The scope of the project is reasonable for the funds available for these grants.
- The extent to which the planned approach reflects sufficient input from and partnership with the Head Start or Early Head Start program.

3. Staff and Position Data—35 points

- The extent to which the principal investigator (or for 1.02, the graduate student) and other key research staff possess the research expertise necessary to conduct the study as demonstrated in the application and information contained in their vitae.
- For Priority Area 1.01 the principal investigator(s) has earned a doctorate or equivalent in the relevant field and has first or second author publications in major research journals.
- The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with Head Start/Early Head Start program staff and parents.
- The adequacy of the time devoted to this project by the principal investigator and other key staff in order to ensure a high level of professional input and attention. For graduate students, the adequacy of the supervision provided by the graduate student's mentor.

Required Notification of the Single Point of Contact

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and American Samoa have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule.

When comments are submitted directly to ACF, they should be addressed to: William Wilson, Head Start Bureau, 330 C Street, S.W., Washington, D.C. 20447, Attn: Head Start University Partnerships or Graduate Student Head Start Research. A list of the Single Points of Contact for each State and Territory can be found on the web site *http://www.dhhs.gov/progorg/grantsnet/laws-reg/spoq0695.htm.*

Dated: February 16, 2000.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 00–4277 Filed 2–23–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of OIG Special Fraud Alert on Rental of Space in Physician Offices by Persons or Entities to Which Physicians Refer

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice sets forth a recently issued OIG Special Fraud Alert concerning rental of space in physicians' offices by persons or entities that provide health care items or services to patients that are referred, either directly or indirectly, by the physician-landlord. For the most part, OIG Special Fraud Alerts address national trends in health care fraud, including potential violations of the anti-kickback statute for Federal health care programs. This Special Fraud Alert specifically highlights questionable or suspect rental arrangements for space in physicians' and other practitioners' offices, and how the space rental safe harbor can protect legitimate arrangements.

FOR FURTHER INFORMATION CONTACT: Julie Kass, Office of Counsel to the Inspector General, (202) 619–0335.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Inspector General (OIG) issues Special Fraud Alerts based on information it obtains concerning particular fraudulent or abusive practices within the health care industry. Special Fraud Alerts are intended for widespread dissemination to the health care provider community, as well as those charged with administering the Medicare and Medicaid programs. To date, the OIG has published in the **Federal Register** the texts of ten previously-issued Special Fraud Alerts. [1] It is the OIG's intention to publish future Special Fraud Alerts in this same manner as a regular part of our dissemination of such information. [2]

In an effort to promote voluntary compliance in the health care industry and assist providers in their compliance efforts, the OIG has developed a Special Fraud Alert, set forth below, that addresses potential problem areas with regard to the rental of space in physicians' offices by persons or entities to which physicians refer patients. Among other things, this Special Fraud Alert addresses suspect rental arrangements for space in physicians' offices with regard to: (1) the appropriateness of rental agreements; (2) the rental amounts; and (3) time and space considerations. A reprint of this Special Fraud Alert follows.

[1] See December 19, 1994 (59 FR 65372); August 10, 1995 (60 FR 40847); June 17, 1996 (61 FR 30623); April 24, 1998 (63 FR 20415); and January 12, 1999 (64 FR 1813).

[2] All OIG Special Fraud Alerts are also available on the internet at the OIG web site at http://www.dhhs.gov/progorg/oig/frdalrt/index.htm.

II. Special Fraud Alert: Rental of Space in Physician Offices by Persons or Entities to Which Physicians Refer (February 2000)

The Office of Inspector General (OIG) was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, abuse and waste in the Department's programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through a nationwide program of audits, investigations and inspections.

To reduce fraud and abuse in the Federal health care programs, including Medicare and Medicaid, the OIG actively investigates fraudulent schemes that are used to obtain money from these programs and, when appropriate, issues Special Fraud Alerts that identify practices in the health care industry that are particularly vulnerable to abuse.

This Special Fraud Alert focuses on the rental of space in physicians' offices by persons or entities that provide health care items or services (suppliers) [3] to patients that are referred either directly or indirectly by their physician-landlords. In this Special Fraud Alert, we describe some of the potentially illegal practices the OIG has identified in such rental relationships.

Questionable Rental Arrangements for Space in Physician Offices

A number of suppliers that provide health care items or services rent space in the offices of physicians or other practitioners. Typically, most of the items or services provided in the rented space are for patients, referred or sent, either directly or indirectly, to the supplier by the physician-landlord. In particular, we are aware of rental arrangements between physician-landlords and:

- Comprehensive outpatient rehabilitation facilities (CORFs) that provide physical and occupational therapy and speech-language pathology services in physicians' and other practitioners' offices;
- Mobile diagnostic equipment suppliers that perform diagnostic related tests in physicians' offices; and
- Suppliers of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) that set up ''consignment closets'' for their supplies in physicians' offices.

The OIG is concerned that in such arrangements, the rental payments may be disguised kickbacks to the physician-landlords to induce referrals. We have received numerous credible reports that in many cases, suppliers, whose businesses depend on physicians' referrals, offer and pay ''rents''—either voluntarily or in response to physicians'' requests—that are either unnecessary or in excess of the fair market value for the space to access the physicians' potential referrals.

[3] Persons or entities may be either suppliers or providers. For purposes of this Special Fraud Alert, we will refer to such persons as suppliers.

The Anti-Kickback Law Prohibits Any Payments To Induce Referrals

Kickbacks can distort medical decision-making, cause overutilization, increase costs and result in unfair competition by freezing out competitors who are unwilling to pay kickbacks. Kickbacks can also adversely affect the quality of patient care by encouraging physicians to order services or recommend supplies based on profit rather than the patients' best medical interests.

Section 1128B(b) of the Social Security Act (the Act) prohibits knowingly and willfully soliciting, receiving, offering or paying anything of value to induce referrals of items or services payable by a Federal health care program. Both parties to an impermissible kickback transaction are liable. Violation of the statute constitutes a felony punishable by a maximum fine of $25,000, imprisonment up to five years, or both. The OIG may also initiate administrative proceedings to exclude persons from Federal health care programs or to impose civil money penalties for fraud, kickbacks and other prohibited activities under sections 1128(b)(7) and 1128A(a)(7) of the Act.[4]

Suspect Rental Arrangements for Space in Physician Offices

The questionable features of suspect rental arrangements for space in physicians' offices may be reflected in three areas:

- The appropriateness of rental agreements;
- The rental amounts; and
- Time and space considerations.

Below, we examine these suspect areas, which separately or together may result in an arrangement that violates the anti-kickback statute, in order to help identify questionable rental arrangements between physicians and the suppliers to which they refer patients. This list is not exhaustive, but

[4] Some of the arrangements identified as suspect in this Special Fraud Alert may also implicate the Ethics in Patient Referrals Act, also known as the Stark law (section 1877 of the Act). The interpretation of the Stark law is under the jurisdiction of the Health Care Financing Administration (HCFA).

rather gives examples of indicators of potentially unlawful activity.

Appropriateness of Rental Agreements

The threshold inquiry when examining rental payments is whether payment for rent is appropriate at all. Payments of ''rent'' for space that traditionally has been provided for free or for a nominal charge as an accommodation between the parties for the benefit of the physicians' patients, such as consignment closets for DMEPOS, may be disguised kickbacks. In general, payments for rent of consignment closets in physicians' offices are suspect.[5]

Rental Amounts

Rental amounts should be at fair market value, be fixed in advance and not take into account, directly or indirectly, the volume or value of referrals or other business generated between the parties. Fair market value rental payments should not exceed the amount paid for comparable property. Moreover, where a physician rents space, the rate paid by the supplier should not exceed the rate paid by the physicians in the primary lease for their office space, except in rare circumstances. Examples of suspect arrangements include:

- Rental amounts in excess of amounts paid for comparable property rented in arms-length transactions between persons not in a position to refer business;
- Rental amounts for subleases that exceed the rental amounts per square foot in the primary lease;
- Rental amounts that are subject to modification more often than annually;
- Rental amounts that vary with the number of patients or referrals;
- Rental arrangements that set a fixed rental fee per hour, but do not fix the number of hours or the schedule of usage in advance (i.e., ''as needed'' arrangements);
- Rental amounts that are only paid if there are a certain number of Federal health care program beneficiaries referred each month; and
- Rental amounts that are conditioned upon the supplier's receipt of payments from a Federal health care program.

Time and Space Considerations

Suppliers should only rent premises of a size and for a time that is reasonable and necessary for a commercially reasonable business purpose of the supplier. Rental of space that is in excess of suppliers' needs creates a presumption that the payments may be a pretext for giving money to physicians for their referrals. Examples of suspect arrangements include:

- Rental amounts for space that is unnecessary or not used. For instance, a CORF requires one examination room and rents physician office space one afternoon a week when the physician is not in the office. The CORF calculates its rental payment on the square footage for the entire office, since it is the only occupant during that time, even though the CORF only needs one examination room;
- Rental amounts for time when the rented space is not in use by the supplier. For example, an ultrasound supplier has enough business to support the use of one examination room for four hours each week, but rents the space for an amount equivalent to eight hours per week;
- Non-exclusive occupancy of the rented portion of space. For example, a physical therapist does not rent space in a physician's office, but rather moves from examination room to examination room treating patients after they have been seen by the physician. Since no particular space is rented, we will closely scrutinize the proration of time and space used to calculate the therapist's ''rent.''.

In addition, rental amount calculations should prorate rent based on the amount of space and duration of time the premises are used. The basis for any proration should be documented and updated as necessary. Depending on the circumstances, the supplier's rent can consist of three components: (1) Exclusive office space; (2) interior office common space; and (3) building common space.

1. *Apportionment of exclusive office space.*—The supplier's rent should be calculated based on the ratio of the time the space is in use by the supplier to the total amount of time the physician's office is in use. In addition, the rent should be calculated based on the ratio of the amount of space that is used exclusively by the supplier to the total amount of space in the physician's office. For example, where a supplier rents an examination room for four hours one afternoon per week in a physician's office that has four examination rooms of equal size and is open eight hours a day, five days per week, the supplier's prorated annual rent would be calculated as follows:

Physician office rent per day		Percent of physician office space rented by supplier		Percent of each day rented by supplier		No. of days rented by supplier per year		
Annual rent of primary lease ÷ no. of work days per year.	×	Sq. ft. exclusively occupied by supplier ÷ total office sq. ft.	×	4 hours ÷ 8 hours	×	52 days (i.e., ÷ 1 day per week).	=	Supplier's annual rent for exclusive space

2. *Apportionment of interior office common space.*—When permitted by applicable regulations, rental payments may also cover the interior office common space in physicians' offices that are shared by the physicians and any subtenants, such as waiting rooms. If suppliers use such common areas for their patients, it may be appropriate for the suppliers to pay a prorated portion of the charge for such space. The charge for the common space must be apportioned among *all* physicians and subtenants that use the interior office common space based on the amount of non-common space they occupy and the duration of such occupation. Payment for the use of office common space should not exceed the supplier's pro rata share of the charge for such space based upon the ratio of the space used exclusively by the supplier to the total amount of space (other than common space) occupied by all persons using such common space.

3. *Apportionment of building common space.*—Where the physician pays a separate charge for areas of a building that are shared by all tenants, such as building lobbies, it may be appropriate for the supplier to pay a prorated portion of such charge. As with interior office common space, the cost of the building common space must be apportioned among *all* physicians and subtenants based on the amount of non-

[5] This Special Fraud Alert does not address the appropriateness of consignment closet arrangements under HCFA's DMEPOS supplier standards. The interpretation of the DMEPOS supplier standards is a matter under HCFA's jurisdiction.

common space they occupy and the duration of such occupation. For instance, in the example in number one above, the supplier's share of the additional levy for building common space could not be split 50/50.

The Space Rental Safe Harbor Can Protect Legitimate Arrangements

We strongly recommend that parties to rental agreements between physicians and suppliers to whom the physicians refer or for which physicians otherwise generate business make every effort to comply with the space rental safe harbor to the anti-kickback statute. (See 42 CFR 1001.952(b), as amended by 64 FR 63518 (November 19, 1999)). When an arrangement meets all of the criteria of a safe harbor, the arrangement is immune from prosecution under the anti-kickback statute. The following are the safe harbor criteria, all of which must be met:

- The agreement is set out in writing and signed by the parties.
- The agreement covers all of the premises rented by the parties for the term of the agreement and specifies the premises covered by the agreement.
- If the agreement is intended to provide the lessee with access to the premises for periodic intervals of time rather than on a full-time basis for the term of the rental agreement, the rental agreement specifies exactly the schedule of such intervals, their precise length, and the exact rent for such intervals.
- The term of the rental agreement is for not less than one year.
- The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions, and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.
- The aggregate space rented does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of the rental.

Arrangements for office equipment or personal services of physicians' office staff can also be structured to comply with the equipment rental safe harbor and personal services and management contracts safe harbor. (See 42 CFR 1001.952(c) and (d), as amended by 64 FR 63518 (November 19, 1999)). Specific equipment used should be identified and documented and payment limited to the prorated portion of its use. Similarly, any services provided should be documented and payment should be limited to the time actually spent performing such services.

What To Do If You Have Information About Fraud and Abuse Against Medicare or Medicaid Programs

If you have information about physicians, DMEPOS suppliers, CORFs or other suppliers engaging in any of the activities described above, contact any of the regional offices of the Office of Investigations of the Office of Inspector General, U.S. Department of Health and Human Services, at the following locations:

Field offices	States served	Telephone
Boston	MA, VT, NH, ME, RI, CT	617–565–2664
New York	NY, NJ, PR, VI	212–264–1691
Philadelphia	PA, MD, DE, WV, VA, DC	215–861–4586
Atlanta	GA, KY, NC, SC, FL, TN, AL, MS	404–562–7603
Chicago	IL, MN, WI, MI, IN, OH, IA	312–353–2740
Dallas	TX, NM, OK, AR, LA, CO, UT, WY, MT, ND, SD, NE, KS, MO	214–767–8406
Los Angeles	AZ, NV, So. CA	714–246–8302
San Francisco	No. CA, AK, HI, OR, ID, WA	415–437–7961

Dated: February 16, 2000.

June Gibbs Brown,

Inspector General.

[FR Doc. 00–4212 Filed 2–22–00; 8:45 am]

BILLING CODE 4150–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosures of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Intervention and Surveillance Modeling Network (CISNET).

Date: March 30–31, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lalita D. Palekar, PhD. Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8066, Bethesda, MD 20892–7405, 301/496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

February 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–4299 Filed 2–23–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose