FAVORABLE

OIG WATCH

08-09

Percentage-based gainsharing that doesn't fit the safe harbor

CABRA CONSULTING

What OIG Said

OIG said percentage-based compensation doesn't fit the safe harbor, but it can still be defensible if you prove you're paying for specific performance actions, not referrals.

- ✓ A medical center paid surgeon groups 50% of cost savings from implementing 36 specific cost reduction measures in spine fusion surgery, compensation varied with performance and wasn't set in advance.

- ✓ OIG acknowledged this violates both the CMP for inducing service reductions and doesn't fit the personal services safe harbor because aggregate compensation wasn't predetermined.

- ✓ OIG blessed it anyway because: (1) payments tied to specific, measurable cost reduction actions, not generalized savings; (2) baseline measures and utilization floors prevented inappropriate service reductions; (3) caps limited payment for Federal program procedures to prior year volumes; (4) limited one-year duration; (5) per capita distribution diluted individual incentives.

- ✓ The critical insight: transparent tracking of what specific actions generated what specific savings, with clinical safeguards proving the changes didn't compromise care, made variable compensation defensible.

CABRA CONSULTING

Diligence Checklist

What you need to be ready to show in diligence

- ✓ Document the specific actions that generate cost savings or performance improvement, not generalized formulas like "X% of all savings" but tied to identifiable cost-reduction activities with transparent tracking.
- ✓ Establish baseline measures and utilization floors that prevent inappropriate service reductions, prove changes don't compromise clinical quality using objective, nationally-validated indicators.
- ✓ Cap variable compensation tied to Federal program volume at historical baseline levels, don't let increased referrals from existing physicians drive higher payments.
- ✓ Limit duration and scope of percentage-based arrangements, OIG emphasized the one-year term and aggregate caps as important protections against open-ended incentives.
- ✓ Show per capita or other distribution methods that dilute individual physician incentives to game the system, avoid structures where one doctor can dramatically increase personal compensation through referral behavior.

If your value-based arrangement, co-management agreement, or MSO structure uses variable fees without these protections, this is what OIG said separates legitimate performance incentives from paying for referrals.

CABRA CONSULTING

Structure not diligence-ready?

Cabra Consulting helps healthcare organizations make sure compensation and transaction structures are independently valued, clearly scoped, and defensible in diligence.

CABRA CONSULTING