FAVORABLE

OIG WATCH

08-12

Per-service administrative fees that don't fit the safe harbor

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What OIG Said

OIG said per-service fees don't fit the personal services safe harbor, but can still be defensible if they're fair market value and don't create referral risk.

- ✓ A company provided purely administrative insurance preauthorization services to imaging centers and charged a per-service fee for each preauthorization processed.
- ✓ OIG acknowledged this doesn't fit the personal services and management contracts safe harbor because aggregate compensation wasn't set in advance, it varied based on volume of preauthorizations processed.
- ✓ OIG blessed it anyway because: (1) fees were fair market value and arm's-length, (2) the service provider wasn't a healthcare entity and couldn't influence referrals, (3) services were purely administrative with no patient contact, and (4) the provider made no promises about obtaining authorizations.
- ✓ The critical insight: not fitting the safe harbor isn't automatically disqualifying if you can prove the arrangement doesn't create improper incentives for referrals or utilization.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Have a third-party FMV opinion supporting your per-unit pricing (PMPM, per-encounter, per-shift, etc.), prove the rate is arm's-length and commercially reasonable even though aggregate compensation varies.
- ✓ Show that variable pricing is commercially necessary and standard in the industry, not structured to reward referrals or drive inappropriate volume.
- ✓ Prove the service provider isn't in a position to influence referrals or steer patients, document clear boundaries around scope of work and no marketing/patient contact.
- ✓ Document that services are purely administrative or support functions, not activities that could generate Federal healthcare program business (like coding, billing, or clinical decision-making).
- ✓ Keep written agreements with defined scope, clear performance standards, and no side arrangements that could suggest the real compensation model is "pay for referrals."

If your MSO or administrative services arrangement uses variable fees and you can't prove these protections, you're at risk of the "doesn't fit safe harbor, can't defend why" trap.

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Structure not diligence-ready?

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

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