FAVORABLE

OIG WATCH

08-15

Multi-year gainsharing with annual rebasing to prevent duplicate payments

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What OIG Said

OIG said multi-year percentage-based compensation creates kickback risk if earlier-accomplished savings carry forward across years, annual rebasing prevents duplicate payment for the same cost reductions.

- ✓ A hospital paid cardiology groups 50% of cost savings over three years from implementing 30 specific cost reduction measures, compensation varied with performance and wasn't set in advance.

- ✓ OIG acknowledged this doesn't fit the personal services safe harbor because aggregate compensation wasn't predetermined, and raised specific concerns about multi-year arrangements creating "improper duplication of physician payments."

- ✓ OIG blessed it because of annual rebasing: at the end of year one, that year became the new baseline for year two calculations, preventing physicians from being paid repeatedly for the same cost reductions achieved in prior years.

- ✓ The critical insight: without annual rebasing, multi-year gainsharing arrangements can result in "unearned duplicate payments" that amount to unlawful kickbacks even if the initial structure was legitimate.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Implement annual rebasing for any multi-year performance-based compensation, and reset baselines at the end of each performance period so savings or improvements achieved in prior years aren't counted again in subsequent years.
- ✓ Document the rebasing methodology clearly in contracts, show exactly how year-end results become the new baseline for the next period, eliminating duplicate payment risk.
- ✓ Cap payments based on prior year Federal program volume, don't let increased referrals from existing physicians drive higher variable compensation in subsequent years.
- ✓ Monitor whether savings in later years are actually new efficiencies or just carrying forward prior achievements, prove each payment period reflects fresh performance improvements.
- ✓ Consider one-year terms instead of multi-year where feasible, OIG consistently notes that longer duration increases fraud and abuse risk, and multi-year arrangements "could well lead to a different result" without robust safeguards.

If your multi-year MSO agreement, co-management arrangement, or value-based contract has percentage-based fees without annual rebasing, you're at risk of the "duplicate payment kickback" 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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