FAVORABLE

OIG WATCH

09-05

Hospital paying physicians for emergency on-call coverage for uninsured patients

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What OIG Said

OIG said on-call compensation can work if it's fair market value for actual services rendered, not determined by referral volume, and limited to tangible physician responsibilities.

- ✓ A hospital paid physicians flat fees for emergency on-call services to uninsured patients: $100 for ED consultations, $300 for admissions, $350 for surgical procedures, and $150 for endoscopy procedures. Payment only occurred when physicians actually responded on-site and provided documented services.

- ✓ OIG acknowledged this is remuneration in a referral relationship that "could potentially generate prohibited remuneration" if structured improperly, but blessed it because payments were for tangible services actually rendered — not "lost opportunity" or amorphous payments.

- ✓ OIG's key test: compensation must be (1) fair market value in an arm's-length transaction for actual and necessary services, and (2) not determined in any manner that takes into account the volume or value of referrals or other business generated between the parties.

- ✓ Critical safeguard: physicians only got paid for services to uninsured patients (verified through state eligibility determination), eliminating the risk of being "paid twice" by collecting both the hospital payment and insurance reimbursement.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Have a reputable third-party FMV opinion covering your on-call or coverage compensation rates. OIG emphasized payments must be "within the range of fair market value for services rendered, without regard to referrals or other business generated between the parties."
- ✓ Prove you're paying only for tangible services actually provided, not "lost opportunity" payments, not payments when no identifiable services are rendered, and not compensation structures that pay physicians twice for the same service.
- ✓ Show that payment rates are tailored to reflect actual value of distinct service categories (ED consults vs. admissions vs. procedures), uniform across specialties, and documented through detailed claims that verify services were actually rendered.
- ✓ Document that aggregate on-call payments aren't disproportionately high compared to the physician's regular practice income, which OIG flagged as a red flag for disguised kickbacks.
- ✓ Keep written agreements specifying services, response time requirements, documentation obligations, and payment methodology. OIG noted that transparency and accountability reduce the risk that arrangements disguise payments for referrals.

If your on-call payments include "lost opportunity" fees with no real services, pay regardless of actual ED calls, or aren't independently valued at FMV, that's the profile OIG said could disguise unlawful remuneration.

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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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