FAVORABLE

OIG WATCH

10-14

Per-test fees for hospital "under arrangements" sleep testing services

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What OIG Said

OIG said this structure can work if fees are fair market value, negotiated at arm's-length, and each party contributes meaningfully beyond just referrals or a billing number.

- ✓ A sleep testing company contracted with a hospital to provide equipment, technicians, and supplies for hospital-owned sleep testing. The hospital paid a per-test fee and billed patients/payors for the services.

- ✓ OIG acknowledged this is remuneration that could trigger Anti-Kickback concerns, especially with "per-click" fee structures that inherently reflect volume.

- ✓ OIG blessed it because: (1) the per-test fee was fair market value from arm's-length negotiation, (2) the fee doesn't individually account for referral volume, (3) the vendor gets paid even if the hospital's claim is denied, and (4) both parties contribute substantially (hospital provides space, utilities, medical director; vendor provides equipment and staff).

- ✓ Critical detail: the vendor has no physician ownership, provides no marketing services, and supplies no ancillary items (like DME) to patients, avoiding the profile of paying above-market to influence referrals or accepting below-market to secure downstream business.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Have a reputable third-party FMV opinion covering the per-unit or per-test fees, confirming they're consistent with arm's-length market rates and don't account for referral volume or value.
- ✓ Prove the vendor gets paid regardless of whether you collect from the payor, not "we only pay you if Medicare pays us."
- ✓ Show that both parties contribute meaningfully to the service: if you're the hospital, you're not just a billing number with referrals; if you're the vendor, you're not providing ancillary services or marketing that could look like buying access.
- ✓ Document that no referring physicians have ownership in the vendor, and the vendor isn't owned by the hospital — OIG flagged both as red flags for self-dealing or conditioned referrals.
- ✓ Keep the scope limited to services integral to the arranged-for care (e.g., sleep testing). Don't bundle in DME, post-discharge services, or marketing under the same contract.

If your "under arrangements" deal can't pass this test, or if the vendor is physician-owned, provides marketing, or you're paying above/below market, this is the profile OIG said raises kickback concerns.

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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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