UNFAVORABLE

OIG WATCH

10-16

Per-occurrence payments to referral sources with flawed FMV survey methodology

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What OIG Said

OIG said surveying referral sources about their costs and time doesn't establish defensible fair market value - you need to show what you'd pay non-referral sources for comparable services in an arm's-length transaction.

- A cochlear implant manufacturer proposed paying clinics $37 per occurrence for warranty-related services (troubleshooting, device returns). The manufacturer surveyed nine clinics to establish the fee based on average salaries and time allocations for audiologists, technicians, and administrators.

- OIG rejected the arrangement, stating "we are not confident that...Requestor's survey method for establishing fair market value is sufficient to ensure that Requestor will not be overpaying a referral source for the RMA Services."

- The critical flaw: "Requestor's survey only took into account time spent by and average salaries for audiologists, technicians, and administrative staff of the Clinics, who are actual or potential referral sources. It is not clear that the survey captures amounts commensurate with what it would cost the Requestor to obtain comparable services from individuals or entities that are not potential referral sources."

- Additional concerns: paying on "per-occurrence basis" for services the manufacturer already provides to customers at no cost creates per-transaction incentive to recommend the manufacturer's product over competitors, with "no safeguards to deter such steering."

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Have independent market data showing what non-referral sources would charge for comparable services - not just surveys of the affiliated providers you're paying or who refer to you.
- ✓ Prove your FMV methodology compares to arm's-length transactions with entities that have no referral relationship or financial interest in your business - surveying your own network doesn't establish market rates.
- ✓ Show aggregate fixed fees set in advance rather than per-occurrence or per-transaction payments that create direct financial incentive tied to each referral or recommendation.
- ✓ Document commercial necessity showing why you need to pay providers for services you already make available through other channels - if you already offer the service at no cost, payments to referral sources look like buying recommendations.
- ✓ Keep evidence that your fee structure doesn't create improper steering incentives - if providers can influence patient choice of your product over competitors, per-transaction payments are high risk.

If you're doing this and you can't prove commercial need, FMV support based on independent non-referral source comparisons, and fixed payment structures disconnected from transaction volume, this is the profile OIG said will draw fire.

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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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