FAVORABLE

OIG WATCH

10-24

Bundled equipment, staffing, and marketing services with separate FMV fees

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What OIG Said

OIG said bundling equipment, operational services, and marketing services is permissible if each component has a separate fixed fee at fair market value in an arm's-length transaction, fees aren't tied to referral volume, and the recipient contributes substantially rather than just providing billing and referrals.

- ✓ A sleep testing provider contracted with a hospital to provide equipment rental, full-time marketing services, and as-needed operational support (technicians, IT, supplies) for the hospital's sleep center, with the provider positioned to influence referrals through marketing activities.

- ✓ OIG said the structure is acceptable because the agreement includes "aggregate, set in advance, fair market value fee structure" with three separate fees (equipment, marketing, as-needed services) that are "consistent with fair market value in arm's-length transactions" and "do not take into account the volume or value of referrals."

- ✓ Critical safeguard: fees are "payable to Requestor regardless of whether the Hospital collects payment from the patient or third party payors" - eliminating reimbursement guarantee that would create additional financial incentive to generate volume.

- ✓ OIG distinguished this from problematic "turnkey" arrangements where "one provider supplies little more than a billing number and a captive stream of referrals, while another provider...furnishes the bulk of the services" - here, the hospital "assumes business risk and contributes substantially" including space, medical director, and administrative services.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Have separate fair market value support for each service component (equipment rental, marketing services, operational support) showing each fee is consistent with arm's-length transactions and not bundled to hide inflated payments.
- ✓ Prove all fees are fixed, set in advance, and not tied to volume or value of referrals or business generated - even if actual utilization varies, the fees remain constant throughout the contract term.
- ✓ Show fees are payable regardless of whether you collect payment from patients or payors - no reimbursement guarantee that would create additional financial incentive to generate unnecessary volume.
- ✓ Document that the recipient contributes substantially to the enterprise (space, medical director, administrative services, capital investment) - not just providing a billing number and referral stream while the vendor does everything.
- ✓ Keep a written agreement with at least a 1-year term specifying all services to be provided, and ensure aggregate services don't exceed what's reasonably necessary for the commercially reasonable purpose.

If your bundled services arrangement can't show separate FMV support for each component, includes fees that vary with collections or volume, or looks like a "turnkey" deal where one party just bills while the other operates everything, this is the profile OIG said creates significant fraud and abuse risk.

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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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