UNFAVORABLE

OIG WATCH

# 10-26

Below-cost ambulance service pricing for SNF Medicaid transport in exchange for federal referrals

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# What OIG Said

*OIG said below-cost pricing on services the customer pays for creates a strong inference of "swapping", trading discounts for referrals of more profitable federal business.*

- An ambulance company offered SNFs two payment plans for Medicaid transport: (1) a capitated rate that would be below total costs if all residents were Medicaid-only, or (2) below-cost fee-for-service rates for Medicaid-only transports.

- OIG said this "could potentially generate prohibited remuneration" because both parties have obvious motives: the SNFs minimize losses under their Medicaid per-day rate, and the ambulance company secures referrals in a competitive market.

- OIG's key test: "prices offered to the SNF that are below the supplier's total costs give rise to an inference that the supplier and the SNF may be 'swapping' the below-cost rates on business for which the SNF bears risk in exchange for other profitable non-discounted Federal business."

- Critical principle: OIG looks for whether the rate is "commercially reasonable in the absence of other, non-discounted business." If the only way the pricing makes financial sense is through referrals on other service lines, that's the kickback profile.



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# Diligence Checklist

*What you need to be ready to show in diligence*

- ✓ Prove every contracted service is priced at or above your total cost of providing that service, standing alone, without relying on other referrals or service lines to make the economics work.
- ✓ Show that pricing is commercially reasonable independent of any referral relationship. If your pricing only makes sense because "we'll get their Medicare Part B business," that's the swap OIG flagged.
- ✓ Document that both parties have legitimate business reasons for the pricing that don't depend on referrals flowing back. Buyers will ask: why would you agree to lose money on this unless you're getting something else?
- ✓ Separate service lines in distinct contracts with transparent, arm's-length pricing for each. Don't bundle or cross-subsidize across service lines where one party controls referrals on the profitable line.
- ✓ Have independent FMV support showing each contracted service is priced commercially reasonably as a standalone transaction, not as part of a quid-pro-quo referral arrangement.

*If you're offering below-cost pricing on services the customer pays for, and the customer also refers more lucrative federal business to you, this is exactly the "swapping" profile OIG said could draw sanctions.*



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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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