FAVORABLE

OIG WATCH

11-10

MSO administering state pay-for-performance payments on behalf of Medicaid program

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What OIG Said

OIG said an MSO can administer payments on behalf of a state or health plan if the MSO has no discretion over amounts, funds come from the principal, and there's clear attribution and oversight.

- ✓ A healthcare management company contracted with a state Medicaid program to administer disease management services and disburse pay-for-performance payments to participating physicians and dentists, with checks drawn on the MSO's own bank account but funded by the state.

- ✓ OIG acknowledged this creates the appearance that the MSO is paying physicians for referrals, but concluded it doesn't implicate anti-kickback because the MSO is acting purely as an agent: disbursing the state's funds, according to the state's rules, under the state's supervision, with no discretion over amounts.

- ✓ The MSO earned a fair market value fee for its administrative services, and had to return any undisbursed P4P payments to the state, there was no nexus between the P4P payments flowing through and the MSO's own compensation.

- ✓ All program materials clearly identified the state/program as the payor (not the MSO), and the state retained audit rights to ensure compliance with the agreement.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Have a written agreement clearly defining your administrative role as agent with no discretion over payment amounts, timing, or recipients of funds flowing through your entity.
- ✓ Show that payments you're administering are funded by the principal (health plan, health system, government program) and you're required to return undisbursed funds, prove you're not using pass-through payments to disguise your own payments for referrals.
- ✓ Prove your management or administrative fees are separately documented, set in advance at fair market value, and have no connection to the volume or value of payments flowing through your entity to providers.
- ✓ Maintain clear attribution in all materials and payment instruments showing the principal (not your MSO) as the source of payments, so providers understand who's actually paying them.
- ✓ Document oversight mechanisms: reporting requirements, audit rights, and principal's supervision of your payment administration activities.

If your MSO has discretion over payments that relate to your own services or products, or if your fees vary with the pass-through payment volume, this protective structure breaks down and OIG might reach a different conclusion.

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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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