UNFAVORABLE

OIG WATCH

11-15

Physician-owned pathology lab management company with percentage-of-revenue fees

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What OIG Said

OIG said management fees tied to collections or referral volume, even if labeled "fair market value", look like paying physicians to refer to themselves.

- A physician-owned management company would provide complete pathology lab management services (space, equipment, personnel, billing, marketing) to a third-party lab in exchange for fees calculated as a percentage of the lab's income.

- OIG said this is remuneration that could trigger Anti-Kickback scrutiny, and the fee structure failed safe harbor protection because fees weren't set in advance and would effectively vary with the volume and value of business the physician investors referred to the lab.

- More than 40% of ownership and more than 40% of revenue would come from physician investors who could refer specimens, which OIG said underscores risks of overutilization, distorted medical decision-making, and increased program costs.

- OIG concluded the arrangement appeared to have "no business purpose other than to permit the physician investors to profit from the business they generate" through their referrals, even though the lab (not the management company) would bill Medicare.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Have management fees or support fees that are fixed in advance for a defined term (typically 12+ months) and documented in writing, not tied to collections, referrals, or claims paid.
- ✓ Show that fees are supported by a third-party fair market value opinion that accounts for scope of services, time commitments, and actual commercial need, not just labeled "FMV" without backup.
- ✓ Prove the arrangement serves a legitimate commercial purpose beyond letting physician investors profit from their own referrals, services must be necessary, clearly scoped, and not exceed what's reasonably required.
- ✓ Keep investor ownership and revenue from investor referrals under safe harbor thresholds (40% for both), or be prepared to demonstrate additional safeguards if you're over those limits.
- ✓ Maintain written agreements with at least a 1-year term, defined scope of services, and no side arrangements or performance kickers that tie payments to volume.

If your MSO or management structure uses percentage-based fees tied to collections or referral volume, this is exactly the profile OIG said poses more than minimal fraud risk and lacks commercial reasonableness.

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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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