UNFAVORABLE

OIG WATCH

12-06

Anesthesia group paying ASC 'management fees' + ASC-owned anesthesia subsidiaries

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What OIG Said

OIG said these arrangements look like paying for referrals, not paying for services—even with a fair market value opinion.

- ⚠ Arrangement A: An anesthesia group offered to pay ASCs per-patient "management fees" for services like pre-op nursing assessments, office space, and billing assistance, services the ASCs were already billing Medicare to provide through facility fees.

- ⚠ OIG said this is double payment for the same services, and the additional remuneration could unduly influence the ASCs to select that anesthesia group as their exclusive provider.

- ⚠ Arrangement B: ASC physician-owners created subsidiaries to bill for anesthesia services, then contracted out substantially all operations to the anesthesia group. The ASC owners kept the residual profits while controlling the volume of referrals.

- ⚠ OIG compared this to its 2003 Special Advisory Bulletin on suspect joint ventures, where referrers expand into a related line of business to receive profits as disguised payment for their Federal program referrals.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Prove you're not paying twice for the same services. If facility fees already cover pre-op assessments, supplies, space, and administrative support, additional "management fees" for those same items will draw scrutiny.
- ✓ Show that services you're purchasing are commercially necessary, clearly scoped, and don't duplicate what's already included in ASC facility payments under Medicare rules.
- ✓ Have documentation that your payments are for actual services rendered to you (not just a fee for being selected as the exclusive provider), with pricing supported by independent FMV analysis of incremental value.
- ✓ Avoid structures where you're contracting out substantially all operations while the referring physicians control volume and keep residual profits; that's the joint venture profile OIG flagged as disguised payment for referrals.
- ✓ If you're paying fees only for non-Federal patients while serving as exclusive provider for all patients, prove the payment isn't inducing referrals of Federal beneficiaries.

If you're paying for access or exclusivity rather than defined, necessary services, 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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