FAVORABLE

OIG WATCH

12-09

Therapy providers offering reduced rates for state-paid services while accessing Medicare/Medicaid residents

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What OIG Said

OIG said differential pricing is acceptable if reduced rates are fair market value and above the provider's cost; below-cost pricing creates an inference of swapping discounted business for Federal referral access.

- ✓ Veterans' homes contracted with therapy providers through competitive RFP. Providers charged reduced rates for services to state-funded veterans while billing full Medicare rates for Federal beneficiaries at the same facilities. OIG was concerned this could be "swapping“, discounting one line of business to induce referrals of separately billable Federal business.

- ✓ OIG said below-cost pricing gives rise to an inference that the provider is swapping losses on discounted business for the ability to bill Federal programs at full rates on other business. Rates that are lower than what the provider charges other similar-volume buyers with no Federal business also raise concerns.

- ✓ The arrangement was approved because both contractors certified their reduced rates were fair market value and above their costs to provide the services. This broke the inference that discounts were tied to or conditioned on Federal referral access.

- ✓ Competitive procurement helped demonstrate commercial reasonableness. OIG said it was within the state's discretion to select bidders offering the most advantageous proposals, and conserving state resources through legitimate competition is acceptable.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Have documentation proving any reduced or discounted rates are fair market value, not just competitive, but actually FMV for the services provided.
- ✓ Prove reduced rates are above your cost to provide the services. Below-cost pricing creates a presumption you're swapping losses for Federal referral access, which OIG reads as kickback activity.
- ✓ If you offer different rates to different buyers, document that pricing differences are based on legitimate business factors (volume, scope, competitive procurement) and not tied to Federal referral potential.
- ✓ For competitive procurement processes, maintain documentation showing the bid was open, evaluation criteria were objective, and selection was based on value rather than who can provide the most Federal business.
- ✓ Avoid ancillary remuneration not directly related to the services being contracted, offering additional free services, equipment, or benefits alongside tiered pricing significantly increases scrutiny.

If you're offering below-cost rates on one service line while billing Federal programs at full rates on another, this is the profile OIG said creates a swapping inference and kickback exposure.

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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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