FAVORABLE

OIG WATCH

12-20

Hospital providing free electronic interface to physicians for ordering lab/diagnostic services

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What OIG Said

OIG said free technology to referring physicians isn't remuneration if it has no independent value, meaning physicians can only use it to access your specific services, not for any other purpose.

- ✓ A county hospital wanted to give community physicians free access to an electronic interface that would let them transmit orders for lab and diagnostic services to the hospital and receive results back. The interface served no other purpose and could only communicate with this specific hospital.

- ✓ OIG restated its general principle that any remuneration between hospitals and physicians should be at fair market value, and that free items relieving physicians of financial obligations pose significant risk. But OIG carved out an exception for items with no independent value.

- ✓ OIG said if an item is "integrally related" to the provider's services, meaning it can only be used for those specific services and has no value apart from them, then it's not remuneration at all. The interface here was a contemporary version of giving physicians a printer that can only print results from your specific lab.

- ✓ Because the interface had no independent value and physicians still had to maintain their own EHR systems, hardware, and connectivity, OIG said this didn't constitute remuneration under Anti-Kickback. The hospital wasn't relieving physicians of costs they'd incur anyway, it was just facilitating workflow for services ordered from that hospital.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Prove the technology or service you're providing has no independent value, document that it can only be used to facilitate orders and results for your specific services, with no other functionality or purpose.
- ✓ Show that physicians remain responsible for all costs they'd otherwise incur, including their own EHR systems, hardware, connectivity, and maintenance. You're not relieving them of financial obligations.
- ✓ Document that the technology serves no purpose beyond transmitting orders to you and receiving results back. If it has additional features physicians could use for other providers or purposes, you need fair market value support.
- ✓ Have clear written terms showing the technology is offered equally to all physicians who request it, not selectively to high referrers.
- ✓ If the technology has independent value, meaning physicians could use it for purposes beyond ordering from you, treat it as remuneration that must be at fair market value, or creates kickback risk.

If you're giving physicians free technology that relieves them of costs they'd otherwise incur or has value beyond facilitating your specific services, you're potentially providing remuneration that needs independent valuation support.

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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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