UNFAVORABLE

OIG WATCH

14-03

Lab pays EHR vendor a per-order fee to become an ‘in-network’ referral option

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What OIG Said

OIG said this structure reads like buying referrals, not paying for services

- ⚠ A clinical lab paid per-order fees to an EHR vendor so that referring physicians could send lab orders without paying a transmission charge.
- ⚠ OIG said these payments are “remuneration” under Anti-Kickback, the lab is paying to be selected and referred.
- ⚠ OIG flagged that the financial benefit to physicians (avoiding a $1 transmission fee) was directly tied to choosing the lab, creating a volume-based inducement.
- ⚠ OIG emphasized that there was no independent value to the lab, the services weren’t new, necessary, or worth paying for; they existed under prior free arrangements.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Show that any per-transaction or volume-based fee you pay has a defined scope, necessity, and supportable value.
- ✓ Prove that referring parties aren't financially rewarded (or spared a cost) for sending you volume.
- ✓ Have an FMV opinion or other documentation showing why the payment exists, and that it's not a swap for referrals.
- ✓ Be able to explain what services you're paying for, why they matter, and why they're commercially reasonable.

If you're doing this and you can't prove commercial need, FMV support, and independence from referral volume, 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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