FAVORABLE

OIG WATCH

14-05

Pharmacy vendor fees for dispensing services in a direct-to-patient drug sales program

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What OIG Said

OIG said vendor service fees can be okay if they're fair market value, set in advance, based on independent valuation, and not tied to referrals or volume.

- ✓ A pharmaceutical manufacturer contracted with an online pharmacy to dispense a brand-name drug directly to patients for a fixed cash price, outside of insurance. The manufacturer paid the pharmacy flat monthly fees plus per-transaction fees for dispensing, storage, enrollment, and patient communication services.

- ✓ OIG acknowledged these payments are remuneration, which means they could trigger Anti-Kickback concerns if the pharmacy could arrange for or recommend purchases of the manufacturer's other federally reimbursable products.

- ✓ OIG concluded favorably because the fees were arrived at through arm's-length negotiations, were consistent with fair market value, were based on independent third-party valuation, and did not take into account the value or volume of referrals or other business generated between the parties.

- ✓ The per-transaction fees covered only services necessary to dispense the product, not marketing or other non-integral services, and the arrangement prohibited both parties from marketing other products or services to participants, which reduced inducement risk.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Have independent third-party FMV documentation for all vendor fees, whether flat fees, per-transaction fees, or monthly fees, covering every service category (dispensing, storage, enrollment, communication, IT development, etc.).
- ✓ Prove fees were established through arm's-length negotiations and are not tied to referral volume, collections, or business generated between the parties.
- ✓ Show that per-transaction or variable fees cover only services actually necessary to deliver the product or service, not marketing, promotional activities, or inducements to steer business.
- ✓ Keep a written service agreement that defines scope, prohibits the vendor from offering inducements to refer other products, and includes audit rights to confirm compliance.
- ✓ Document that fee amounts are consistent with what the vendor would charge unrelated third parties for comparable services in arm's-length transactions.

If your vendor compensation structure can't demonstrate arm's-length FMV support and independence from referral volume, you're at risk of it reading like payment for steering.

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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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