UNFAVORABLE

OIG WATCH

14-06

Per-fill fees to local pharmacies for support services tied to patient referrals

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What OIG Said

OIG said calling fees "fair market value" doesn't make them defensible if the payment structure makes them look like you're buying referrals.

- A specialty pharmacy proposed paying local retail pharmacies per-fill fees for support services (patient counseling, gathering prescriber information, medication history, consent, prescription transfer) each time those services resulted in a referral to fill a specialty drug prescription.

- The requestor certified the fees were fair market value for the support services. OIG rejected the arrangement anyway because the per-fill fees were "directly linked to business generated", the local pharmacy would only get paid when the support services resulted in referrals to the specialty pharmacy.

- OIG said this structure creates "significant risk that the Per-Fill Fees would represent compensation for the Local Pharmacies generating business... rather than solely compensation for bona fide, commercially reasonable services."

- The critical problem: the specialty pharmacy didn't propose to pay local pharmacies for these same services when patients weren't referred to them. The payment was contingent on the referral, which made it look like paying for the referral itself, not paying for the service.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Prove you pay for services regardless of whether they generate referrals or business for you. If you only pay when the service results in a referral, that's a red flag that you're paying for the referral, not the service.
- ✓ Show that the same services, provided to patients who don't refer business to you, would still be compensated at the same rate. Payment can't be contingent on business generation.
- ✓ Document that fees are for bona fide, commercially reasonable services that have legitimate value independent of any referral. OIG will ask whether the service would be worth paying for even if it didn't result in business for you.
- ✓ Have a fee structure that isn't directly tied to volume or number of referrals. Per-transaction fees that only trigger when business is generated are inherently problematic under Anti-Kickback analysis.
- ✓ Be prepared to explain why you're paying this entity for these services when you don't pay others for the same work. Selective payment for services that happen to generate referrals reads like disguised referral fees.

If you're only paying for "support services" when they result in referrals to you, and you can't prove you'd pay for the same services even without the referral, 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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