UNFAVORABLE

OIG WATCH

16-12

Lab providing free administrative services to dialysis facilities to capture referral streams

CABRA CONSULTING

What OIG Said

OIG said free or below-market services to referral sources create an inference of inducement, especially when you admit you're offering them to obtain or retain business.

- A laboratory offered to provide test tube and specimen labeling services at no charge to selected dialysis facilities. The lab would decide which facilities get the free services based on whether offering them would be "necessary to obtain or retain" that facility's business.

- OIG acknowledged this is remuneration that triggers Anti-Kickback concerns. These administrative services have real economic value - dialysis facilities normally perform this work themselves with their own personnel, and Medicare makes no separate payment for these tasks under the bundled ESRD payment system.

- The arrangement fails the personal services safe harbor because the facilities pay nothing for services that have value. OIG said when a lab offers services for free or below fair market value to a referral source, an inference arises that the services are offered to induce referrals.

- Critical concern: The lab could capture substantial ongoing revenue from lifelong dialysis patient testing, including separately billable non-ESRD tests. OIG explicitly warned about "swapping" arrangements where you discount or give away bundled services to capture separately billable referral streams.

CABRA CONSULTING

Diligence Checklist

What you need to be ready to show if you're providing services between entities in a referral relationship

- ✓ Prove any services provided have compensation at fair market value. If services have economic value that the recipient would otherwise have to perform at their own expense, they must be paid for at FMV - not provided free or below market.
- ✓ Document that services are commercially necessary, clearly scoped, and not selectively offered to high-referral sources. Show selection criteria that aren't based on "obtaining or retaining business."
- ✓ Avoid "swapping" structures where you provide free or discounted services on one revenue stream to capture another revenue stream. OIG views these as suspect inducement arrangements.
- ✓ Have written agreements that satisfy the personal services safe harbor: specified services, term of at least one year, FMV compensation set in advance, and no payment tied to referrals or volume.
- ✓ Show that competitors don't uniformly offer the same free services - if they do, your arrangement still risks scrutiny even if it's "industry standard."

If you're doing this and can't prove commercial necessity, FMV support, and independence from referral volume, this is the profile OIG said will draw fire.

CABRA CONSULTING

Structure not diligence-ready?

Cabra Consulting helps healthcare organizations make sure compensation and transaction structures are independently valued, clearly scoped, and defensible in diligence.

CABRA CONSULTING