FAVORABLE

OIG WATCH

17-09

Physician gainsharing for surgical supply savings

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What OIG Said

OIG said gainsharing payments can be OK if they're set in advance, tied to documented clinical value, and capped by fair market metrics.

- ✓ A hospital created a 3-year gainsharing program where neurosurgeons earned a share of cost savings from reducing surgical supply spend and limiting BMP use, without cutting medically necessary services.
- ✓ OIG acknowledged the payments as "remuneration," so Anti-Kickback was in play, but accepted the program because payments were per capita, capped, and tied to verified cost reductions.
- ✓ OIG noted the payments were calculated annually, rebased each year, and capped at 50% of expected savings, with documentation showing no link to referral volume or patient steering.
- ✓ A third-party administrator ran the analysis and FMV certifications, and a multi-party oversight committee monitored quality and case mix to guard against cherry-picking or under-treatment.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Have a third-party perform and document benchmarking and FMV validation for all incentive payments.
- ✓ Prove your savings calculations are rebased annually and exclude volume growth from Federal payors.
- ✓ Show that physician incentives are per capita, capped, and tied to defined cost-saving actions, not referrals or collections.
- ✓ Maintain documentation that all changes are clinically supported, with oversight verifying no reduction in necessary care.
- ✓ Disclose the payment structure to patients and retain proof of that notice.

If your shared savings program can't prove FMV, clinical necessity, and independence from referrals, it's not defensible, and it's the profile OIG reviewed here.

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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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