UNFAVORABLE

OIG WATCH

18-14

Free inpatient drug supply to hospitals while maintaining high list prices elsewhere

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What OIG Said

OIG said giving high-priced products to hospitals for free can look like paying for formulary access and future referrals, not commercial reasonableness.

- A drug manufacturer wanted to give free product (valued at $38,892 per vial) to hospitals exclusively for inpatients with one specific diagnosis, while maintaining those high prices for all other indications and patient populations.

- OIG treated this as remuneration to hospitals, which are referral sources through employed physicians and formulary decisions.

- OIG rejected it because: (1) it relieved hospitals of massive financial obligations without creating any savings for federal programs, (2) it functioned as a seeding arrangement where giving free inpatient doses would lead to paid outpatient prescriptions once patients were discharged, and (3) the manufacturer explicitly said it couldn't reduce prices due to Medicaid Best Price impact, so it gave product away to preserve pricing power everywhere else.

- The arrangement maintained the manufacturer's ability to charge federal programs nearly $39,000 per vial for all other uses, while removing hospitals' main reason for refusing to stock the drug: the price.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Prove that any "free product" or sample program isn't designed to influence formulary decisions, physician prescribing patterns, or future purchases from hospitals or referral sources.
- ✓ Show that pricing strategies don't create a two-tier system where you give away product to one narrow group while maintaining artificially high prices for federal programs everywhere else.
- ✓ Have documentation that any free product programs actually save federal healthcare programs money, not just shift costs or create future purchase obligations.
- ✓ Demonstrate that consignment or reduced-price arrangements wouldn't accomplish the same clinical access goals without creating kickback risk.
- ✓ If you cite "Best Price" constraints as a reason you can't lower prices, be ready to explain why giving product away for free to induce formulary adoption is commercially reasonable instead of simply reducing prices across the board.

If you're giving away high-value products to hospitals or referral sources while maintaining premium pricing everywhere else, this is the profile OIG said looks like buying loyalty and inducing referrals, not serving patients.

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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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