FAVORABLE

OIG WATCH

# 22-04

## Digital health vendor fees + patient incentive programs: when provider payments raise kickback concerns

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# What OIG Said

*OIG blessed this vendor payment structure because the fees were fair market value, set based on service needs, and didn't vary with Federal program volume.*

- ✓ A digital health company provides substance use disorder treatment through an app-based program with patient incentives (up to $599/year per patient on smart debit cards), funded by healthcare provider customers who pay vendor fees.

- ✓ OIG acknowledged this creates remuneration flow: providers pay the vendor, and the vendor passes some of that money to patients as treatment incentives, which could look like providers indirectly paying patients to use their services.

- ✓ OIG accepted it because the vendor fees were certified as fair market value and structured around service configurations and treatment intensity, not tied to Federal program billing volume, referral patterns, or how much gets submitted to Medicare.

- ✓ The payment models (flat monthly per active member OR pay-for-performance with clinical outcome bonuses) both passed because neither varied based on the volume or value of federally reimbursable services generated.



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# Diligence Checklist

*What you need to be ready to show in diligence*

- ✓ Have documentation showing vendor fees are fair market value and were set independently, not negotiated based on referral volume, patient panel size, or expected Federal program billing.
- ✓ Prove your fee structure (whether flat monthly or pay-for-performance) is tied to service scope, treatment intensity, and clinical configurations, not to how many patients you refer or how much revenue the vendor relationship generates for your organization.
- ✓ Show that performance-based payments (if applicable) are tied to clinical outcomes or utilization metrics, not to Federal program billing volume or specific referral patterns.
- ✓ Keep written agreements with clear service specifications, pricing methodology documentation, and evidence that the vendor controls the clinical protocols (you're not steering the program design to maximize your billing opportunities).
- ✓ Maintain audit trails showing the vendor isn't providing you with data or reports that would let you track "ROI" based on Federal program reimbursement generated per dollar of vendor fees paid.

*If your digital health vendor contracts don't include this level of documentation showing fees are FMV and independent of Federal program volume, you're potentially at risk.*



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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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