UNFAVORABLE

OIG WATCH

22-09

Lab specimen collection fees: when per-encounter payment structures fail even with FMV rates

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What OIG Said

OIG rejected this payment structure because the per-patient-encounter methodology was inherently volume-based, creating kickback risk even though each fee was certified as fair market value.

- A laboratory wanted to pay hospitals per-patient-encounter fees for specimen collection services (phlebotomy, processing, handling) when patients present with lab orders that don't specify which lab to use.

- The lab certified the per-encounter fees were consistent with fair market value in arm's-length transactions, with written agreements covering all services for at least one year.

- OIG said the arrangement generated prohibited remuneration and would draw sanctions because the per-patient-encounter payment methodology inherently takes into account the volume or value of referrals, more patients referred equals more fees paid.

- OIG's critical point: "regardless of whether the payment is fair market value for services rendered," a per-click fee structure that varies with referral volume creates inappropriate steering incentives that FMV certification alone cannot overcome.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Prove your payment methodology for ancillary services (lab, imaging, therapy services) is not structured as per-patient, per-test, per-encounter, or other "per-click" arrangements that automatically increase with referral volume.
- ✓ Show that compensation for specimen collection, technical components, or processing services is either: (a) set as a flat fee unrelated to volume, (b) based on FTE coverage or time-based arrangements, or (c) structured to comply with a safe harbor that explicitly permits the payment methodology.
- ✓ Have documentation showing fees were set in advance, independently valued, and the payment structure doesn't create financial incentives to steer patients to specific labs or ancillary providers based on where the hospital/practice gets paid more per unit.
- ✓ Maintain written agreements with clear service specifications that demonstrate the hospital or practice is being paid for legitimate services performed, not for choosing which downstream provider receives referrals.
- ✓ Keep audit trails showing employed or contracted physicians are not required, directed, or financially incentivized to refer to specific labs or ancillary providers based on per-unit fees the hospital receives.

If your lab service agreements or ancillary contracts include per-specimen, per-test, or per-encounter fee structures, this is the profile OIG said will draw fire, even with FMV rates.

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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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