FAVORABLE

OIG WATCH

22-21

Public EMS subleasing space and equipment to its private ambulance contractor

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What OIG Said

OIG said lease payments from a private ambulance provider to a public EMS agency can be okay, if they're fair market value, commercially necessary, and not tied to referrals.

- ✓ OIG reviewed a structure where a county EMS department subleased space and equipment to its contracted ambulance provider for operating the EMS Communications Center.
- ✓ OIG treated the rent and maintenance charges as remuneration, which means the arrangement triggered anti-kickback concerns, but they declined to sanction.
- ✓ OIG accepted it because all payments were set based on cost, subject to FMV certification, and limited to only what was needed for operations, not excessive or referral-tied.
- ✓ The deal included "true-up" mechanisms to match actual costs, and the agency certified it would not profit or adjust charges based on value of referrals.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Have documentation that space, equipment, and maintenance charges are consistent with fair market value and commercially necessary.
- ✓ Prove that no payments are tied to the volume or value of referrals or business generated.
- ✓ Show that rent-related pass-throughs (utilities, maintenance, insurance) are cost-based and reconciled via annual true-ups.
- ✓ Keep signed agreements with defined square footage, equipment lists, and service scope.
- ✓ Be able to show that the government entity does not profit from the arrangement.

If you can't show FMV support and commercial necessity for every dollar, even rent and pass-throughs may look like inducements in the eyes of regulators.

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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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