UNFAVORABLE

OIG WATCH

# 23-06

Paying physician-linked labs for the technical component of commercial pathology tests

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# What OIG Said

*Carving out Federal patients doesn't fix a deal that still feels like paying for referral flow.*

- ⚠ OIG reviewed a proposal where a national anatomic pathology lab would buy only the technical component from other labs (including physician-owned labs) for commercially insured patients, then bill commercial payors for both technical + professional components.

- ⚠ Even though the per-specimen technical fees were described as FMV and Federal program business was "carved out," OIG said the payments still count as remuneration to referral sources who are positioned to send Medicare/Medicaid specimens.

- ⚠ OIG emphasized its longstanding view that carve-outs are not dispositive, commercial payments can disguise inducement for Federal referrals when the same physicians control where all specimens go.

- ⚠ The national lab admitted it could do the technical work in-house cheaper and more efficiently, yet would pay third-party labs anyway, and expected to gain Federal referrals as a result. OIG saw no commercially reasonable purpose other than buying steerage.



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# Diligence Checklist

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

- ✓ Have a defensible FMV analysis for every payment stream, but understand FMV alone does not neutralize AKS intent risk.
- ✓ Prove a commercially reasonable business rationale for outsourcing work you can do better/cheaper internally, document the “why,” not just the “price.”
- ✓ Show the arrangement is operationally necessary and not a convenience payment to referral sources (scope, volume, and selection logic should make sense without Federal referral upside).
- ✓ Avoid structures where commercial dollars flow to parties who also control Federal referrals unless the model can stand on its own economics.
- ✓ Keep tight contracts: defined services, no side deals, and no strategic “share the work to win the network” narrative in emails or decks.

*If you’re paying referral-source entities for commercially carved-out work without a clear, efficiency-based business need, this is the profile OIG said will draw fire.*



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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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