UNFAVORABLE

OIG WATCH

24-08

Medicare Advantage plan sharing savings with employer groups via gainshare

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What OIG Said

OIG flagged this as a potential inducement, especially with no FMV support, no required benefit to enrollees, and no tie to actual services.

- ⚠ OIG reviewed a proposal where a Medicare Advantage plan (EGWP) would share “savings” with employer groups based on a negotiated medical loss ratio target, even if those groups paid no premium.
- ⚠ OIG said the payments qualified as remuneration, which could induce referrals and trigger Anti-Kickback risk.
- ⚠ The payments weren’t required to be used for enrollee benefits and could exceed the amount the employer paid in, raising concerns that the money was an inducement, not a reimbursement.
- ⚠ OIG noted that termination clauses tied to enrollee volume increased the risk that groups would steer patients to maintain eligibility for payments.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Show that any savings-share or gainshare payments are tied to clearly defined, commercially necessary services, not just volume.
- ✓ Prove payments are independently valued and defensible as FMV, especially if they can exceed any premiums paid in.
- ✓ Document how payments benefit enrollees directly, not just employers or intermediaries.
- ✓ Avoid arrangements that create referral incentives through enrollment volume thresholds or financial triggers.
- ✓ Keep signed agreements with scope, thresholds, and use-of-funds provisions that stand up to board or buyer review.

If you're doing this and you can't prove commercial need, FMV support, and independence from referral volume, 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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