FAVORABLE

OIG WATCH

25-01

Free drug program for Medicare patients with unmet coverage

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What OIG Said

OIG said giving away a drug can still be low-risk if it's based on financial need, not referrals or future reimbursement.

- ✓ OIG reviewed a pharma company's program giving free product to financially eligible Medicare patients who can't afford their coinsurance or aren't covered.
- ✓ OIG said this is still "remuneration", giving something of value, and could trigger Anti-Kickback if the intent were to influence referrals or future coverage.
- ✓ OIG approved it because the decision was based solely on financial need, there were firewalls from marketing, and prescribers could not bill or profit from the free product.
- ✓ Patients can use any provider and change providers at any time; eligibility doesn't depend on product use history, and no part of the product is billed to Medicare.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Show that eligibility is based on documented financial criteria, not marketing, coverage status, or physician involvement.
- ✓ Prove providers don’t bill for the free drug and can only charge for administration where allowed.
- ✓ Maintain written attestations from both patients and providers, confirming no billing and no reimbursement for the free product.
- ✓ Demonstrate that product shipments are patient-specific, tightly scoped, and controlled, with no resale, reuse, or substitution.
- ✓ Keep a clear separation between patient services and any sales/marketing activities.

If your free drug access model isn’t grounded in financial need and airtight operational controls, you're potentially at risk of scrutiny.

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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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