UNFAVORABLE

OIG WATCH

# 08-10

Block lease with FMV pricing still flagged as profit-sharing scheme

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# What OIG Said

*OIG said even with FMV pricing and safe harbor compliance, if the economic structure lets referral sources profit from their own referrals, that's the remuneration that violates Anti-Kickback.*

- A radiation oncology practice proposed leasing space, equipment, and staff to urologist groups so the urologists could bill Medicare for IMRT services they referred to the facility.

- The leases had FMV pricing backed by an independent third-party study, and fees were set in advance, meeting the technical requirements of the space, equipment, and personal services safe harbors.

- OIG said it's still problematic because the real remuneration isn't the rent the urologists pay, it's the profit opportunity the oncology practice is giving them by letting them keep the spread between Medicare reimbursement and lease costs.

- OIG called this a "suspect contractual joint venture" where the urologists refer patients, the practice does all the work, and they share the economic benefit, which looks like paying for referrals with extra steps.



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# Diligence Checklist

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

- ✓ Prove the service provider is taking real business risk, not just acting as a pass-through that lets referral sources profit from their own referrals with minimal capital, human resources, or operational involvement.
- ✓ Show that compensation reflects actual services rendered, not an opportunity to share in the economic benefit of referred volume, and document that fees aren't calibrated to historical referral patterns to ensure profit.
- ✓ Demonstrate that the referral source is genuinely providing services or taking risk, not just contracting out substantially all operations to the party receiving the referrals while keeping the profit.
- ✓ Prove the arrangement serves a legitimate commercial purpose beyond giving referral sources a way to profit from ordering services, show it's not just "doing indirectly what you can't do directly" (paying for referrals).
- ✓ Have documentation showing the structure wasn't designed to split profits from Federal healthcare program business between the referring party and the operating party.

*If your MSO, ASC joint venture, or co-management arrangement has this economic profile, even with FMV pricing, this is what 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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