FAVORABLE

OIG WATCH

09-17

Multi-party ambulance joint venture with layered remuneration streams

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What OIG Said

OIG said this can be okay if each revenue stream is at fair market value, returns are proportional to capital invested, and fee structures don't incentivize inappropriate referrals or overutilization.

- ✓ Four entities formed an ambulance company joint venture with equal 25% ownership stakes. One owner (a hospital) also purchased transport services "under arrangements" from the joint venture at fair market value rates. Another owner (an ambulance company) provided management services to the joint venture for a fee equal to a percentage of gross revenues.

- ✓ OIG acknowledged this creates multiple remuneration streams between parties who can refer to each other, which is "highly prone to fraud and abuse." But they blessed it because: (a) the transport fees and management fees were both at fair market value, (b) ownership distributions were strictly proportional to capital contributions, and (c) most revenue came from 911 calls no owner could control, not investor referrals.

- ✓ OIG specifically analyzed the risk of "swapping", where a provider offers discounts on non-Medicare business (services "under arrangements") in exchange for Medicare referrals the provider can bill directly. Here, the hospital paid fair market value for bundled services, not discounted rates, which eliminated swapping risk.

- ✓ The management fee didn't meet the safe harbor because it wasn't "set in advance"—it varied with gross revenues. But OIG accepted it because the manager had a financial disincentive to refer transports to the joint venture (it made more money providing services directly), and the fee was certified as fair market value for comprehensive management services.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Have independent fair market value support for each revenue stream in the arrangement, ownership distributions, service fees, management fees, "under arrangements" pricing. Show that no fee is discounted below FMV to incentivize referrals or inflate returns on another revenue stream.
- ✓ Prove that ownership returns are strictly proportional to capital contributions. Show that distributions don't reward referral volume, and that investors have assumed genuine financial risk (capital contributions, guarantees, capital call obligations).
- ✓ Document that the majority of revenue comes from sources investors can't control (like 911 dispatch systems, competitive RFPs, or other non-referral-based business). If investor referrals contribute revenue, show they're well below 40% of total revenue and not the primary driver of the venture.
- ✓ For percentage-based management fees or other variable compensation, prove the fee is at fair market value and show there's no financial incentive for the manager to increase referrals to inflate the fee base. Keep evidence that services are reasonably necessary and don't exceed commercial need.
- ✓ For "under arrangements" pricing, demonstrate you're paying fair market value for bundled services, not offering discounts on non-Medicare business in exchange for separately billable Medicare referrals. Show there's no "swapping" scheme.

If your joint venture has multiple remuneration streams between referring parties and you can't prove each stream is at fair market value and independent of referral volume, this is the profile OIG said is highly prone to fraud and abuse.

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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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