FAVORABLE

OIG WATCH

10-15

50-50 joint venture with 100% interested investors based on FMV valuation

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What OIG Said

OIG said a joint venture between parties who refer to each other can be permissible if ownership is based on independent third-party fair market value analysis, distributions are proportional to capital contributions, and physician compensation is not tied to referrals or business generated.

- ✓ A physician organization and health system formed a 50-50 joint venture to own an ambulatory care center, with both parties able to refer patients to the new facility. This arrangement fails safe harbor protection because 100% of investors are in a position to make or influence referrals.

- ✓ OIG said the structure mitigates referral payment concerns because "the investors would make equal contributions of financial, capital, and human resources to the joint venture and receive proportional distributions" based on "a fair market value analysis conducted by a health care valuation expert."

- ✓ Critical safeguard: contributions valued equally using independent third-party valuation, with cash true-up "to the extent that the above-listed contributions are not valued equally, the party whose clinics are valued lower would contribute cash to achieve a 50-50 investment."

- ✓ Additional protections: physicians compensated "in a way that reflects fair market value in an arm's-length transaction" without regard to "volume or value of referrals," no physician owners receive distributions, and ancillary management agreements must be "at arm's-length" and compliant with anti-kickback statute.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Have an independent third-party health care valuation expert conduct a fair market value analysis of all contributions (clinics, intangible assets, operational value) to establish ownership percentages.
- ✓ Prove contributions are equal or show the documented cash true-up methodology when asset values don't match - no investor contributes disproportionately more than their ownership stake justifies.
- ✓ Show distributions are directly proportional to capital contributions, not based on referrals generated or business volume directed to the joint venture or co-investors.
- ✓ Document that physician compensation does not reflect volume or value of referrals to the JV or co-investors - salaries and bonuses must be at fair market value without regard to referral patterns.
- ✓ Keep ancillary management and professional services agreements at arm's-length with independent FMV support, and ensure no physician investors receive profit distributions that could reward referrals.

If your joint venture can't show independent FMV valuation supporting equal contributions, proportional distributions, and physician compensation disconnected from referral volume, you're at risk even if you think the commercial deal "feels fair" - that's the profile OIG said raises significant fraud and abuse concerns.

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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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