FAVORABLE

OIG WATCH

12-08

IDTF employing physician whose family owns 70% when physician works with other referral sources

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What OIG Said

OIG said physician employment can be acceptable even with significant family ownership if compensation is set salary not tied to volume, the physician makes no referrals, and proper safeguards eliminate overutilization incentives.

- ✓ The interface served no other purpose and could only communicate with this specific hospital. An independent diagnostic testing facility wanted to employ a sleep medicine physician to interpret test results. The physician's wife and father own 70% of the IDTF, and the physician works at a clinic alongside other physicians who could refer patients to the facility.

- ✓ The arrangement failed the small entity investment safe harbor because family member ownership counts as the physician's indirect ownership for regulatory purposes. The 70% family ownership exceeded the 40% threshold for owners who can influence referrals.

- ✓ OIG still approved the arrangement because the physician would receive a set salary not linked to the number of tests interpreted, would make zero referrals to the IDTF, wouldn't solicit business, and the IDTF wouldn't supply DME that could create incentives to skew interpretations.

- ✓ The key protection was structure: fixed salary compensation removes volume-based incentives, and prohibiting the physician from making referrals or soliciting business breaks the "I get paid more if I send more" inference that drives kickback risk.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Document that physician compensation is a set salary or fixed rate not tied to volume, referrals, or collections. Per-unit, percentage-based, or production-based pay creates overutilization risk when family ownership exists.
- ✓ Have clear written restrictions prohibiting the employed physician from making referrals to the entity and from soliciting business or influencing other potential referral sources.
- ✓ Show the physician's primary duty is actually performing the clinical service being compensated, not business development, marketing, or referral generation.
- ✓ If applicable, document that the entity doesn't supply follow-on services or equipment the physician could financially benefit from by skewing clinical judgments.
- ✓ Be prepared to explain how family member ownership is attributed to the physician for safe harbor analysis, and what specific safeguards you've implemented to show the arrangement is bona fide employment rather than disguised referral payments.

If your physician employment arrangement involves significant family ownership and you're paying per-unit or tying compensation to volume, this is the profile that creates kickback exposure even within family businesses.

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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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