FAVORABLE

OIG WATCH

21-02

Health system + surgeons + management company investing in a new ASC

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What OIG Said

OIG said this structure can be low-risk if ownership, compensation, and referral practices are commercially reasonable and not volume-driven.

- ✓ A health system, eight surgeons, and a management company proposed to jointly invest in a newly formed ASC. The surgeons would own 46%, health system 46%, and manager 8%.
- ✓ OIG said this does count as remuneration under Anti-Kickback, but agreed not to impose sanctions given the economic safeguards and lack of referral inducement.
- ✓ OIG noted capital was contributed pro rata, no ownership was offered based on referrals, and all compensation to physicians was FMV and not tied to ASC performance.
- ✓ OIG accepted that physician investors used the ASC personally, and that cross-referral risk was minimal, with <1% of ASC procedures referred to another physician-investor.

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Have physician compensation arrangements documented as fair market value, unrelated to ASC referral volume or performance.
- ✓ Show that ownership offers were not based on past or future referrals, and that no buy-ins were financed or guaranteed by the ASC or any party.
- ✓ Prove that capital contributions and distributions match ownership stakes exactly, with no carveouts or pass-through entities.
- ✓ Confirm that physician-investors personally perform ASC procedures, and that cross-referrals are immaterial.
- ✓ Document that space, equipment, and services are leased at FMV rates under safe-harbor-compliant terms.

If you can't prove every dollar is FMV-based, pro rata, and unrelated to steerage, this is exactly the profile buyers and regulators will dissect.

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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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