UNFAVORABLE

OIG WATCH

21-18

Therapy services joint venture where facility owner invests for 40% stake and controls referral stream

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What OIG Said

OIG said joint ventures structured to share profits from referrals violate anti-kickback law, even when investment prices are independently valued at fair market value.

- A therapy services company formed a joint venture (Newco) with a facility owner who would purchase a 40% stake at a price based on third-party valuation and receive proportional profit distributions.

- OIG said the investment constitutes remuneration because the facility owner would control referral flow from affiliated facilities to Newco, and the investment terms were explicitly based on expected business from those facilities.

- The structure failed three safe harbor tests: more than 40% of owners could influence referrals (Investor Test), more than 40% of revenue would come from investor-owned facilities (Revenue Test), and investment terms were tied to expected referral volume (Investment Offer Test).

- OIG identified this as a contractual joint venture designed to let the therapy company pay the facility owner indirectly for referrals through profit distributions, essentially letting them "do indirectly what they cannot do directly."

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Diligence Checklist

What you need to be ready to show in diligence

- ✓ Prove that fewer than 40% of your JV investors are in a position to make or influence referrals to the joint venture, and that the joint venture doesn't depend on those investors for more than 40% of revenue.
- ✓ Show that investment terms weren't based on expected referral volume or business generation, investors must be investing for legitimate business reasons unrelated to how much they can refer.
- ✓ Demonstrate that the joint venture isn't a contractual arrangement where one party supplies everything (staff, management, operations) while the other party just controls the referral stream and collects profits.
- ✓ Have documentation proving the investor has actual operational participation and financial risk beyond just directing business to the venture, not simply passive profit-sharing tied to referrals they control.

If your JV structure depends on an investor-owner who controls the referral pipeline and shares in the profits based on expected business volume, OIG has told you this is the profile that will draw fire, even with FMV valuations.

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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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