FAVORABLE

OIG WATCH

# 25-09

Physician-owners in a device company with proportional distributions

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# What OIG Said

*OIG said physician-owner profit sharing can be okay, but only if distributions match FMV contributions and aren't tied to referrals or volume.*

- ✓ OIG reviewed a medical device company partially owned by physicians who may recommend or order its products.
- ✓ OIG acknowledged the arrangement involves remuneration and implicates the Anti-Kickback Statute, but found it compliant because it met every prong of the small entity investment safe harbor.
- ✓ OIG noted no more than 40% of ownership or revenue came from referring physicians; investment terms were identical regardless of referral potential; and no distributions have been made yet.
- ✓ Crucially, any future payments will be directly proportional to capital contributions (including FMV of any pre-op services), and physicians received no loans or incentives to buy in.



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# Diligence Checklist

*What you need to be ready to show in diligence*

- ✓ Show ownership and profit split align with FMV of capital invested, no premium for referring physicians.
- ✓ Confirm investment terms are identical for referrers and non-referrers.
- ✓ Prove that any revenue from physician referrals is under 40%, and that no distributions are tied to volume.
- ✓ Document that physicians did not receive loans, guarantees, or indirect funding to acquire their stake.
- ✓ Keep a clean, written record showing no marketing pressure or steerage linked to ownership.

*If your physician-ownership model doesn't meet all 8 safe harbor prongs, you're exposed to scrutiny for kickback risk and improper distributions.*



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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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