Favorable OIG Advisory Opinion Regarding a Hearing Center’s Sublease Arrangements

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On April 28, 2026, the U.S. Department of Health and Human Services, Office of Inspector General (OIG) issued a favorable Advisory Opinion (26-08) regarding a physician-owned corporation’s proposal to establish a centralized center providing items and services to patients with hearing loss who may be candidates for cochlear implants. As part of the arrangement, the corporation would enter into space and equipment subleases with cochlear implant manufacturers, audiologists, and physicians to fill the center.

Because the physician owner and the sublessees would be in a position to refer patients to one another, the arrangement implicates the federal Anti-Kickback Statute (AKS). However, under the proposed arrangement, the physician-owned corporation would receive only fair market value rental payments for the subleased space and equipment, would not receive any additional remuneration from sublessees, and would not profit from the sublease arrangements. No party would provide remuneration for referrals and there would be no requirement or pressure for the parties to make referrals.

For the following reasons, the OIG found that the proposed arrangement satisfies the AKS safe harbor for the rental of space and equipment:

• Each sublease would be in writing and signed by the parties.

• The agreements would specify the exact premises or equipment covered.

• Any periodic use arrangements would specify the schedule, duration, and rental amounts.

• Each sublease would have a term of at least one year.

• Rental charges would be fixed in advance, consistent with fair market value, and not determined based on referrals or other business generated between the parties.

• The rented space and equipment would be limited to what is reasonably necessary for the arrangement's commercially reasonable business purpose.

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For more information, contact:
Joseph M. Gorrell | 973.403.3112 | jgorrell@bracheichler.com
Edward J. Yun | 973.364.5229 | eyun@bracheichler.com
Vanessa Coleman | 973.364.5208 | vcoleman@bracheichler.com

Authors

The following attorneys contributed to this insight.

Joseph M. Gorrell

Member
Healthcare Law

973.403.3112 · 973.618.5512 Fax

jgorrell@bracheichler.com

Edward J. Yun

Member
Healthcare Law

973.364.5229 · 973.618.5589 Fax

eyun@bracheichler.com

Vanessa Coleman

Associate
Healthcare Law

973.364.5208 · 973.618.5566 Fax

vcoleman@bracheichler.com