

OIG Issues Favorable Advisory Opinion on ASC Ownership Succession Planning

Healthcare Law Update

FTC Reaches Deal to Restore Competition in Texas Anesthesia Market

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On March 4, 2026, the U.S. Department of Health and Human Services, Office of Inspector General (OIG) issued a favorable [Advisory Opinion](#) approving a multiphase succession plan involving the transfer of ownership interests in a Medicare-certified ambulatory surgical center (ASC) by a retiring physician to his immediate family members. Specifically, the advisory opinion analyzed whether the transfers of ownership interest by the retiring physician first to his non-physician wife and then to their two physician children, would be prohibited under the Anti-Kickback Statute (AKS) and the civil monetary penalty law (CMPL). The OIG acknowledged that the succession plan could technically trigger anti-kickback concerns, as the physician investors would hold ownership interests in the ASC while also referring patients to the ASC. Despite this, the OIG concluded the arrangement presented a low risk of fraud and was permissible for several important reasons, including:

- The Arrangement Was a Bona Fide Estate Plan. The OIG emphasized that the succession plan was a genuine estate planning strategy, not a scheme to reward referrals.
- Fair Market Value Purchases. Purchases of shares would be made at fair market value as determined by an independent valuation firm.
- Safeguards Upon Retirement. The retiring physician would provide a written certification that he would not directly or indirectly influence referrals to the ASC; he would not formally transfer his patients to his physician children, and would not maintain any administrative or governance role upon retirement.

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