

**STRUCTURAL COMPLIANCE:
HOW ANTI-KICKBACK RISK IMPACTS VALUATION, DILIGENCE, AND DEAL CERTAINTY IN
MEDICAL PRACTICE TRANSACTIONS
GV LAW INSIGHTS**

The federal Anti-Kickback Statute (“AKS”) sits at the center of healthcare transactional risk, yet many medical practices operate with informal referral arrangements, untested compensation structures, or legacy management relationships that do not cleanly fit within an established safe harbor. These issues often remain unnoticed until a buyer or private equity platform begins diligence and encounters structural vulnerabilities. AKS exposure directly affects valuation, indemnity demands, and deal certainty. Understanding how everyday operational practices intersect with transactional scrutiny allows medical practice owners to protect enterprise value before entering the market.

1. Informal Referral Arrangements Become Pricing and Indemnity Risk in Diligence

Medical practices frequently rely on long-standing professional relationships that, while common in the industry, may be characterized by informal understandings regarding referrals, shared expenses, discounted services, or cross-practice marketing. These arrangements rarely map cleanly to an AKS safe harbor, particularly when compensation is not tied to fair market value or when referrals are expected, even implicitly, in exchange for remuneration.

During diligence, buyers treat unclear referral-driven economics as material valuation risk. Revenue streams that appear stable may be reclassified as compliance-dependent or potentially tainted, leading to downward price adjustments, broader representations and warranties, and increased escrow holdbacks. What functions operationally for years within a private practice environment frequently becomes a structural liability when a buyer is required to underwrite regulatory exposure.

2. Compensation and MSO Structures Often Fall Outside Safe Harbors Without Owners Realizing It

Compensation models, including physician employment agreements, productivity bonuses, consulting arrangements, and MSO fee structures, are among the most scrutinized elements of medical transactions. Many practices use percentage-based formulas, collection-linked

bonuses, or revenue-sharing arrangements that were never benchmarked against fair market value or commercially reasonable standards.

MSO arrangements require particular attention. While percentage-of-revenue fees are not categorically prohibited, the Office of Inspector General has repeatedly signaled through advisory opinions and enforcement activity that revenue-based fees may present heightened risk if they involve services that directly or indirectly relate to generating business reimbursable by federal healthcare programs. Buyers therefore approach revenue-linked MSO fees with caution, often insisting on cost-based, fixed-fee, or time-based structures supported by contemporaneous FMV analyses.

These structures may perform adequately in day-to-day operations but create transactional fragility. Buyers must assess whether the compensation framework can withstand regulatory review and whether post-closing operations can continue without modification. If a structure is misaligned with AKS requirements, even unintentionally, buyers may require renegotiation of key contracts, impose transition covenants, or condition closing on restructuring the compensation model. Each of these outcomes affects timing, leverage, and deal certainty.

3. Legacy Compliance Gaps Increase Diligence Drag and Reduce Deal Certainty

Many practices grow around operational habits rather than formal compliance processes. Agreements lack contemporaneous FMV opinions. Referral relationships are not formally documented. Marketing activities are outsourced or delegated without oversight. Vendor and leasing arrangements include benefits or incentives that were never evaluated under AKS or related fraud-and-abuse rules. These gaps accumulate over time and form what buyers view as compliance debt.

In transactions, compliance debt manifests as extended diligence cycles, supplemental disclosure requests, and buyer skepticism that ultimately shifts leverage. A buyer may respond with: broader regulatory reps and warranties, enhanced indemnity caps and survival periods, expanded disclosure schedules, or conditions requiring pre-closing remediation. Even if a deal closes, the process becomes slower, costlier, and less certain outcomes directly tied to the practice's underlying compliance posture.

Practical Takeaways for Medical Practice Owners

Conduct a structured review of all compensation, referral, and MSO arrangements well before engaging in sale discussions. Benchmark compensation to FMV and ensure commercial reasonableness documentation is current. Map every referral-adjacent relationship to an AKS safe harbor and identify arrangements that require restructuring. Formalize marketing, vendor, and co-management agreements that may implicate remuneration. Establish a clear

internal compliance file that organizes FMV reports, board approvals, and contractual support.

Medical practices that enter the market with clean, well-documented structures preserve valuation, accelerate diligence, and increase overall deal certainty.

GV LAW Capabilities

GV LAW advises medical practices, MSOs, and healthcare operators on structuring compliant compensation and management arrangements, preparing for private-equity-backed transactions, and navigating AKS, fraud-and-abuse, and state law considerations. We help clients identify structural exposure, remediate compliance debt, and position their practices to withstand buyer diligence and protect enterprise value.

This Insight provides general information and does not constitute legal advice. For advice on a specific matter, please contact GV LAW.