[*We redact certain identifying information and certain potentially privileged, confidential, or proprietary information, unless otherwise approved by the requestor(s).*]

Issued: December 30, 2025

Posted: January 5, 2026

[Address block redacted]

Re: OIG Advisory Opinion No. 25-12 (Unfavorable)

Dear [redacted]:

The Office of Inspector General ("OIG") is writing in response to your request for an advisory opinion on behalf of [redacted] and [redacted] ("Requestors") regarding Requestors' proposal to market sign-on bonuses to prospective employees of its home care agency with the intention of employing those individuals for the provision of services to other individuals, who most often would be family members of the prospective employees (the "Proposed Arrangement"). Specifically, you have inquired whether the Proposed Arrangement, if undertaken, would constitute grounds for the imposition of sanctions under: the civil monetary penalty provision at section 1128A(a)(7) of the Social Security Act (the "Act"), as that section relates to the commission of acts described in section 1128B(b) of the Act (the "Federal anti-kickback statute"); the civil monetary penalty provision prohibiting inducements to beneficiaries, section 1128A(a)(5) of the Act (the "Beneficiary Inducements CMP"); or the exclusion authority at section 1128(b)(7) of the Act, as that section relates to the commission of acts described in the Federal anti-kickback statute and the Beneficiary Inducements CMP.

Requestors have certified that all of the information provided in the request, including all supplemental submissions, is true and correct and constitutes a complete description of the relevant facts and agreements among the parties in connection with the Proposed Arrangement, and we have relied solely on the facts and information Requestors provided. We have not undertaken an independent investigation of the certified facts and information presented to us by Requestors. This opinion is limited to the relevant facts presented to us by Requestors in connection with the Proposed Arrangement.

Based on the relevant facts certified in your request for an advisory opinion and supplemental submissions, we conclude that the Proposed Arrangement, if undertaken: (i) would result in—if the requisite intent were present—a prohibited offer of remuneration under the Federal anti-kickback statute, which would constitute grounds for the imposition of sanctions under sections 1128A(a)(7) and 1128(b)(7) of the Act; and (ii) would result in a prohibited offer of remuneration under the Beneficiary Inducements CMP, which would constitute grounds for the imposition of sanctions under the Beneficiary Inducements CMP and section 1128(b)(7) of the Act, as that section relates to the commission of acts described in the Beneficiary Inducements CMP.

This opinion may not be relied on by any person[1] other than Requestors and is further qualified as set out in Part IV below and in 42 C.F.R. Part 1008.

I. FACTUAL BACKGROUND

A. In-Home Support Services

Requestors operate a home care agency in [redacted] (the "State"), where the State Medicaid program covers in-home support services ("Services") for eligible members through certain waiver programs and a Medicaid initiative called [redacted]. Individuals eligible for the Services ("Clients") can select attendants ("Attendants") of their choice—who are not required to be certified or licensed—to provide Services, which include personal care (e.g., bathing and dressing), homemaker services (e.g., routine light house cleaning and meal preparation), and health maintenance activities (e.g., skilled tasks like medication administration, medical management, or respiratory care). Under the State Medicaid program, a home care agency that provides Services in the State ("Agency") employs Attendants and also must: provide 24-hour back-up services for scheduled shifts, ensure adequate staffing levels, train Attendants and other staff on their cases, ensure that Attendants follow all tasks set forth in a Client's care plan, and have a nurse on staff to supervise Attendants for any health maintenance activities. Agencies submit claims for Services performed by Attendants to the State Medicaid program and receive payment for those Services.

Requestors certified that they expect their Attendants primarily would be family members of Clients who are parents, grandparents, siblings, children, or other minor relatives for whom the Attendants act as guardians. Requestors certified that, in such cases, they expect that Attendants would be the decision-makers selecting an Agency on behalf of their family members.

B. Proposed Arrangement

Under the Proposed Arrangement, Requestors would market employment opportunities to prospective Attendants. Requestors certified that other Agencies in the community offering the Services to Clients market employee compensation packages to prospective Attendants that may include a sign-on bonus as well as certain other bonuses. Requestors certified that, to be competitive in the market, they would offer, and state in recruitment materials that they offer, a sign-on bonus to prospective Attendants (the "Sign-On Bonus"). Requestors would post Attendant job information through print and digital media advertisements, including through social media posts, videos, and testimonials. In advertising materials for Attendants, Requestors

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[1] We use "person" herein to include persons, as referenced in the Federal anti-kickback statute and Beneficiary Inducements CMP, as well as individuals and entities, as referenced in the exclusion authority at section 1128(b)(7) of the Act.

would provide, among other things, a position overview and list employee qualifications and pay rate ranges. In all recruitment and marketing materials, Requestors would advertise the Sign-On Bonus only as the amount of the bonus. Requestors certified that the purpose of the Sign-On Bonus would be to entice prospective Attendants to choose Requestors' Agency over other Agencies for the provision of Services to the Client for whom the prospective Attendant is responsible. Requestors certified that, once employed, all Attendants would be bona fide employees.

II. LEGAL ANALYSIS

A. Law

1. Federal Anti-Kickback Statute

The Federal anti-kickback statute makes it a criminal offense to knowingly and willfully offer, pay, solicit, or receive any remuneration to induce, or in return for, the referral of an individual to a person for the furnishing of, or arranging for the furnishing of, any item or service reimbursable under a Federal health care program.[2] The statute's prohibition also extends to remuneration to induce, or in return for, the purchasing, leasing, or ordering of, or arranging for or recommending the purchasing, leasing, or ordering of, any good, facility, service, or item reimbursable by a Federal health care program.[3] For purposes of the Federal anti-kickback statute, "remuneration" includes the transfer of anything of value, directly or indirectly, overtly or covertly, in cash or in kind.

The statute has been interpreted to cover any arrangement where one purpose of the remuneration is to induce referrals for items or services reimbursable by a Federal health care program.[4] Violation of the statute constitutes a felony punishable by a maximum fine of $100,000, imprisonment up to 10 years, or both. Conviction also will lead to exclusion from Federal health care programs, including Medicare and Medicaid. When a person commits an act described in section 1128B(b) of the Act, OIG may initiate administrative proceedings to impose civil monetary penalties on such person under section 1128A(a)(7) of the Act. OIG also may initiate administrative proceedings to exclude such person from Federal health care programs under section 1128(b)(7) of the Act.

Congress has developed several statutory exceptions to the Federal anti-kickback statute.[5] In addition, the U.S. Department of Health and Human Services has promulgated safe harbor regulations that specify certain practices that are not treated as an offense under the Federal anti-

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[2] Section 1128B(b) of the Act.

[3] Id.

[4] E.g., United States v. Nagelvoort, 856 F.3d 1117 (7th Cir. 2017); United States v. McClatchey, 217 F.3d 823 (10th Cir. 2000); United States v. Davis, 132 F.3d 1092 (5th Cir. 1998); United States v. Kats, 871 F.2d 105 (9th Cir. 1989); United States v. Greber, 760 F.2d 68 (3d Cir. 1985).

[5] Section 1128B(b)(3) of the Act.

kickback statute and do not serve as the basis for an exclusion.[6] However, safe harbor protection is afforded only to those arrangements that precisely meet all of the conditions set forth in the safe harbor. Compliance with a safe harbor is voluntary. Arrangements that do not comply with a safe harbor are evaluated on a case-by-case basis.

The statutory exception and regulatory safe harbor for employees are potentially applicable to the Proposed Arrangement. The statutory exception protects "any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services."[7] The safe harbor regulations provide that the term "remuneration," as used in the Federal anti-kickback statute, does not include "any amount paid by an employer to an employee, who has a bona fide employment relationship with the employer, for employment in the furnishing of any item or service for which payment may be made in whole or in part under Medicare, Medicaid or other Federal health care programs."[8] For purposes of the employees safe harbor, the term "employee" has the same meaning as it does for purposes of 26 U.S.C. § 3121(d)(2).[9]

2. Beneficiary Inducements CMP

The Beneficiary Inducements CMP provides for the imposition of civil monetary penalties against any person who offers or transfers remuneration to a Medicare or State health care program beneficiary that the person knows or should know is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier for the order or receipt of any item or service for which payment may be made, in whole or in part, by Medicare or a State health care program. OIG also may initiate administrative proceedings to exclude such person from Federal health care programs. Section 1128A(i)(6) of the Act defines "remuneration" for purposes of the Beneficiary Inducements CMP as including "transfers of items or services for free or for other than fair market value."

B. Analysis

The Proposed Arrangement implicates the Federal anti-kickback statute because Requestors would offer the Sign-On Bonus to prospective employees who Requestors expect primarily would: (i) be family members of Clients; and (ii) act as decision-makers for such Clients in selecting the Agency from which a Client would receive items and services that are reimbursable by the State Medicaid program.

The Proposed Arrangement would not satisfy a safe harbor to the Federal anti-kickback statute. We recognize that sign-on bonuses are ordinary offerings in the course of employment contracting and that, when such bonuses—and advertisements for such bonuses—implicate the

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[6] 42 C.F.R. § 1001.952.

[7] Section 1128B(b)(3)(B) of the Act.

[8] 42 C.F.R. § 1001.952(i).

[9] Id.

Federal anti-kickback statute, they are often low risk under the statute. However, in the unique and specific circumstances of the Proposed Arrangement, there is an inextricable link between the employment of the Attendant and the referral of the Client because Requestors certified that they expect Attendants would select an Agency on behalf of Clients who are family members of the Attendants. In fact, the very purpose of the Attendant's employment in such cases would be to provide care to the Client on whose behalf the Attendant would select an Agency. In this circumstance, the advertisement of the Sign-On Bonus appears to be a solicitation for an all but guaranteed referral before employment commences and not an "amount paid by an employer to an employee . . . for employment in the furnishing of any item or service for which payment may be made in whole or in part under Medicare, Medicaid or other Federal health care programs." As such, we do not view the offer and advertisement of the Sign-On Bonus as fitting within the employees exception or safe harbor.

Having determined that the offer of the Sign-On Bonus under the Proposed Arrangement implicates the Federal anti-kickback statute but does not fit within an exception or safe harbor to the Federal anti-kickback statute, we analyze the facts and circumstances of the Proposed Arrangement. For the following reasons, we believe the risk of fraud and abuse presented by the Proposed Arrangement is not sufficiently low under the Federal anti-kickback statute for OIG to issue a favorable advisory opinion.

Under the Proposed Arrangement, Requestors would advertise the Sign-On Bonus only as the amount of the bonus. Prospective Attendants may readily interpret the advertisement of the Sign-On Bonus as an upfront payment that they would receive upon signing an employment contract and prior to the performance of any work under their employment contract. This is problematic in the specific circumstances of the Proposed Arrangement because of the Sign-On Bonus's greater potential to inappropriately steer prospective Attendants to select one Agency over others not just for employment but for the provision of Medicaid-reimbursable items and services to the Attendant's Client family member based on which Agency advertises the most compelling sign-on bonus.

We distinguish this steering risk under the Proposed Arrangement from circumstances in which an employer may offer sign-on bonuses with the hope of future referrals but without any guarantee of referrals, regardless of whether such bonuses are contingent upon the completion of work. Unlike a circumstance in which a prospective employer may offer a sign-on bonus with only the hope of future referrals, Requestor's proposed advertisements would be targeted toward individuals whose employment would, in most cases, be based solely on the provision of Services to the employee's family member.[10] In other words, the marketing materials targeted to prospective Attendant employees operate as advertisements for new Clients because the Attendants, in most circumstances, would be agents for the Clients.

The Proposed Arrangement also presents potential unfair competition and quality of care concerns. The Proposed Arrangement could result in Requestors and their competitors being

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[10] We have been asked to opine only on the offer of the Sign-On Bonus in this particular circumstance. We have not been asked to opine on, and express no opinion regarding, any other remuneration associated with an Attendant's employment.

incentivized to offer increasingly higher sign-on bonuses to induce Attendants, and the Clients for whom they are responsible, to choose Requestors' Agency over other Agencies. Additionally, when Agencies compete for Attendant employees—and consequently, their relative Clients—based on sign-on bonuses, an individual seeking to become an Attendant may select a particular agency based on the amount of a sign-on bonus offered and not the quality of the Agency (for example, the quality of the Agency's 24-hour back-up services or training program), and the Agency may need to divert resources from Client care to pay the sign-on bonuses.

The Beneficiary Inducements CMP also would be implicated when Requestors offer the Sign-On Bonus to a prospective Attendant who is in a position to select an Agency for a family member who may become a Client because that offer of remuneration would be likely to influence the Attendant to choose Requestors' Agency for the provision of items and services that are reimbursable by Medicaid. No exception to the Beneficiary Inducements CMP applies to the proposed advertisement of the Sign-On Bonus, and for the reasons described above, the Proposed Arrangement would result in a prohibited offer of remuneration under the Beneficiary Inducements CMP.

III. CONCLUSION

Based on the relevant facts certified in your request for an advisory opinion and supplemental submissions, we conclude that the Proposed Arrangement, if undertaken: (i) would result in—if the requisite intent were present—a prohibited offer of remuneration under the Federal anti-kickback statute, which would constitute grounds for the imposition of sanctions under sections 1128A(a)(7) and 1128(b)(7) of the Act; and (ii) would result in a prohibited offer of remuneration under the Beneficiary Inducements CMP, which would constitute grounds for the imposition of sanctions under the Beneficiary Inducements CMP and section 1128(b)(7) of the Act, as that section relates to the commission of acts described in the Beneficiary Inducements CMP.

IV. LIMITATIONS

The limitations applicable to this opinion include the following:

- This advisory opinion is limited in scope to the Proposed Arrangement and has no applicability to any other arrangements that may have been disclosed or referenced in your request for an advisory opinion or supplemental submissions.

- This advisory opinion is issued only to Requestors. This advisory opinion has no application to, and cannot be relied upon by, any other person.

- This advisory opinion may not be introduced into evidence by a person other than Requestors to prove that the person did not violate the provisions of sections 1128, 1128A, or 1128B of the Act or any other law.

- This advisory opinion applies only to the statutory provisions specifically addressed in the analysis above. We express no opinion herein with respect to the application of any other Federal, State, or local statute, rule, regulation, ordinance, or other law that may be applicable to the Proposed Arrangement, including, without limitation, the physician self-referral law, section 1877 of the Act (or that provision's application to the Medicaid program at section 1903(s) of the Act).

- This advisory opinion will not bind or obligate any agency other than the U.S. Department of Health and Human Services.

- We express no opinion herein regarding the liability of any person under the False Claims Act or other legal authorities for any improper billing, claims submission, cost reporting, or related conduct.

This opinion is also subject to any additional limitations set forth at 42 C.F.R. Part 1008. OIG reserves the right to reconsider the questions and issues raised in this advisory opinion and, where the public interest requires, to rescind, modify, or terminate this opinion.

Sincerely,

/Susan A. Edwards/

Susan A. Edwards
Assistant Inspector General for Legal Affairs