



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



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

Issued: April 7, 2026

Posted: April 10, 2026

[Address block redacted]

Re: OIG Advisory Opinion No. 26-06 (Favorable)

Dear [redacted]:

The Office of Inspector General (“OIG”) is writing in response to your request for an advisory opinion on behalf of [redacted] (“Requestor”), regarding a State-designated domestic crisis provider’s proposal to bill Federal health care programs for therapy services furnished by Requestor’s employed mental health professionals and to waive any cost sharing for such services (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.

Requestor has 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 Requestor provided. We have not undertaken an independent investigation of the certified facts and information presented to us by Requestor. This opinion is limited to the relevant facts presented to us by Requestor in connection with the Proposed Arrangement. If material facts have not been disclosed, have been misrepresented, or change, then this opinion is without force and effect.

Based on the relevant facts certified in your request for an advisory opinion and supplemental submissions, we conclude that: (i) although the Proposed Arrangement, if undertaken, would generate—if the requisite intent were present—prohibited remuneration under the Federal anti-kickback statute, OIG would not impose administrative sanctions on Requestor in connection

with the Proposed Arrangement under sections 1128A(a)(7) or 1128(b)(7) of the Act, as those sections relate to the commission of acts described in the Federal anti-kickback statute; and (ii) although the Proposed Arrangement, if undertaken, would generate prohibited remuneration under the Beneficiary Inducements CMP, OIG would not impose administrative sanctions on Requestor in connection with the Proposed Arrangement under the Beneficiary Inducements CMP or 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 person¹ other than Requestor and is further qualified as set out in Part IV below and in 42 C.F.R. Part 1008.

I. FACTUAL BACKGROUND

Requestor is a State-designated domestic crisis provider for an eight-county region of [redacted] (the “State”) that serves domestic violence survivors. It is located in a rural, medically underserved area and is a State subcontractor that receives State and Federal grants. Requestor certified that all services that it provides to its clients currently are and have always been free of charge. Those services include a crisis line, legal advocacy, emergency shelter, support groups, case management, therapy, information and referrals, housing stabilization, financial literacy, and transportation.

Requestor historically provided therapy services to its clients through a licensed psychologist, licensed psychological associate, and licensed clinical social worker and relied on various funding streams other than insurance reimbursement to fund these services. However, Requestor certified that, due to a loss in funding and unpredictable and fluctuating funding streams, Requestor must bill Federal health care programs (specifically the Medicare and Medicaid programs) for therapy services in order to cover the costs of employing mental health professionals to provide such services. Requestor does not bill insurers, and certified that it would continue to not bill insurers, for any of the other services it provides (e.g., crisis line services, legal advocacy, and emergency shelter).² Requestor is not currently enrolled in the Medicare or Medicaid program but certified that it, along with the mental health professional employees, would enroll in those programs upon the receipt of a favorable advisory opinion.

Under the Proposed Arrangement, Requestor would bill the Medicare and Medicaid programs for therapy services it provides to its clients and would continue to provide all services without charge (including cost sharing) to clients and without regard to any client’s insurance status or

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.

² Requestor also stated that it would not bill commercial insurance for therapy services because relatively few of its clients are covered by commercial insurance (approximately 1 percent of Requestor’s clients have commercial insurance, which at any given time is around 3 clients). Requestor certified that, given this, enrolling as a participating provider and billing commercial insurance would be disproportionately costly and administratively burdensome.

ability to pay. Requestor pointed to research explaining that financial abuse is a pervasive and effective form of power and control exerted by abusive partners over their victims, and as such, many domestic violence survivors are facing profound economic hardship.³ Requestor certified that, given the prevalence of financial abuse, charging cost sharing for the therapy services could make those services inaccessible to a significant percentage of the population Requestor serves. Requestor also certified that, given its historical mission to provide necessary services for domestic violence survivors at no cost, starting to charge cost-sharing amounts to clients could be viewed by the community as inconsistent with Requestor’s mission and how Requestor has represented its services in the past.

Requestor certified that the mental health professional employees would independently determine the need for therapy and the amount of therapy that is medically necessary for an individual and that Requestor would bill Federal health care programs only for medically necessary therapy. Requestor certified that it would not specifically advertise the availability of free therapy services but that, as a domestic crisis provider, it utilizes television, radio, and presentations to make the community aware of the services it offers. While therapy services would be available to individuals receiving services from Requestor, Requestor certified that such individuals would not be required to receive therapy services in order to receive any other services from Requestor, and as such, those individuals would have complete freedom of choice with respect to determining whether to seek therapy services and from whom they may seek them. Requestor certified that it would not shift any unbilled cost sharing to any third-party payor, including Federal health care programs. Requestor also certified that insurance coverage would not be a factor in deciding to whom it would offer care.

³ According to a 2008 study, financial abuse occurs in 99 percent of domestic violence cases. Adrienne E. Adams et al., Development of the Scale of Economic Abuse, 14 VIOLENCE AGAINST WOMEN 563 (2008). See also Adrienne Adams & Sara Wee, DOMESTIC VIOLENCE AND ECONOMIC WELL-BEING STUDY (Ctr. for Survivor Agency & Justice 2021)). Financial abuse comes in many forms and may include an abuser taking control of all the money, withholding it, and concealing financial information from the victim. See U.S. Dep’t of Health & Human Serv. Office of Women’s Health, Financial Abuse (Feb. 15, 2021), <https://womenshealth.gov/relationships-and-safety/other-types/financial-abuse>. Other examples include: forcing a partner to miss, leave, or be late to work; harassing a partner at their place of work; controlling how a victim spends money; withholding basic living resources; giving a partner an “allowance”; stealing money, credit, property, or information tied to identity; and forcing a partner to file fraudulent legal financial documents or overspend on credit cards. Financial Abuse Fact Sheet, Nat’l Network to End Domestic Violence (March 2025), [Financial-Abuse-Fact-Sheet-March-2025-EN.pdf](#).

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.⁴ 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.⁵ 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.⁶ 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.

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."

⁴ Section 1128B(b) of the Act.

⁵ Id.

⁶ 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).

Section 1128(A)(i)(6)(A) of the Act includes an exception that carves out from the definition of remuneration under the CMP certain waivers of cost-sharing amounts offered to patients in financial need. The exception protects waivers of cost-sharing amounts that are not offered as part of any advertisement or solicitation; are not routine; and are made following an individual determination of financial need or failure to collect after reasonable collection efforts.⁷

III. ANALYSIS

The Proposed Arrangement would implicate the Federal anti-kickback statute because Requestor would waive patient cost sharing for therapy services that Requestor would provide to its clients and bill to Federal health care programs. The Proposed Arrangement also would implicate the Beneficiary Inducements CMP because the waiver of patient cost sharing for therapy services could influence a Medicare or State health care program beneficiary to select a particular provider, practitioner, or supplier—Requestor—for the receipt of items or services reimbursable by Medicare or a State health care program. The remuneration under the Proposed Arrangement would not fall squarely within any exception to the definition of “remuneration” for purposes of the Beneficiary Inducements CMP or any safe harbor to the Federal anti-kickback statute. For example, the Proposed Arrangement would not meet the exception to the Beneficiary Inducements CMP at section 1128A(i)(6)(A) of the Act for waivers of beneficiary cost-sharing obligations because, among other reasons, the exception applies only to waivers of cost-sharing obligations on the basis of financial need or a failure to collect after reasonable collection efforts. Here, Requestor proposes a uniform waiver of any cost-sharing amounts for all patients receiving therapy services, regardless of financial need.

Our concern about potentially abusive waivers of cost-sharing amounts under the Federal anti-kickback statute and, for Medicare and State health care program beneficiaries, the Beneficiary Inducements CMP is longstanding because such waivers can, among other things, result in: (i) excessive utilization of items and services paid for by Federal health care programs; (ii) steering to a particular provider or supplier; and (iii) unfair competition for those that may not be able to afford to waive cost sharing.⁸ Nevertheless, in the circumstances of the Proposed Arrangement and for the following reasons, we believe the risk of fraud and abuse presented by the Proposed Arrangement is sufficiently low under the Federal anti-kickback statute and the Beneficiary Inducements CMP for OIG to issue a favorable advisory opinion.

Requestor historically has provided a wide range of services to domestic violence survivors for free and has not billed insurers for any of those services, which include crisis line services, legal advocacy, emergency shelter, support groups, case management, information and referrals, housing stabilization, financial literacy services, transportation, and therapy services. Under the Proposed Arrangement, Requestor would begin billing Federal health care programs for the therapy services. Waiving cost-sharing amounts for those services would allow Requestor to provide therapy services to clients while continuing to offer its full suite of services for free, which is consistent with Requestor’s historical mission as a State-designated domestic crisis

⁷ 42 C.F.R. § 1003.110.

⁸ See, e.g., Special Fraud Alert, 59 Fed. Reg. 65,374 (Dec. 19, 1994).

provider serving several counties of the State to provide necessary services for domestic violence survivors at no cost.⁹ We do not view this waiver as likely to result in inappropriate steering or unfair competition in the distinct circumstances of the Proposed Arrangement because Requestor's ability to provide all services for free to clients creates access to health care services that individuals in a rural, medically underserved area who are potentially experiencing financial abuse otherwise may be unable to obtain from Requestor or other providers.¹⁰ Additionally, Requestor certified that it would not specifically advertise the availability of free therapy services.¹¹

Further, the Proposed Arrangement is unlikely to result in inappropriately increased costs to Federal health care programs. Requestor certified that the mental health professionals would independently determine the need for therapy and the amount of therapy that is medically necessary for an individual and that Requestor would bill Federal health care programs only for medically necessary therapy. While we acknowledge that Federal health care programs would pay for services under the Proposed Arrangement, the facts do not indicate that any such increased costs would be inappropriate. Requestor certified that it would not shift any unbilled cost sharing to any third-party payor, including Federal health care programs. Finally, Requestor certified that insurance coverage would not be a factor in deciding to whom it would offer care.

The Proposed Arrangement also would not interfere with patient freedom of choice. While therapy services would be available to individuals receiving services from Requestor, Requestor certified that such individuals would not be required to receive therapy services in order to receive any other services from Requestor, so those individuals would have freedom to determine whether to seek therapy services and from whom they may seek them.

We note that our conclusion in no way upends our longstanding concerns about blanket waivers of cost-sharing amounts. However, we believe, in this particular circumstance, with the certifications made by Requestor, that the Proposed Arrangement would enable domestic violence survivors to access therapy services without posing more than a minimal risk of fraud and abuse under the Federal anti-kickback statute. For the same reasons, we would not impose sanctions under the Beneficiary Inducements CMP.

⁹ We note that, outside the context of the Proposed Arrangement, a historical practice of not charging patients likely would not justify cost-sharing waivers.

¹⁰ Given research finding a high prevalence of financial abuse in domestic violence cases, cost-sharing amounts could be a meaningful barrier to many domestic violence survivors accessing the very services they need to respond to the abuse.

¹¹ Requestor certified that it utilizes television, radio, and presentations to make the community aware of its services because it offers a critical service to a rural area that is medically underserved, and individuals need to be aware of Requestor's service offerings in order to avail themselves of those services.

IV. CONCLUSION

Based on the relevant facts certified in your request for an advisory opinion and supplemental submissions, we conclude that: (i) although the Proposed Arrangement, if undertaken, would generate—if the requisite intent were present—prohibited remuneration under the Federal anti-kickback statute, OIG would not impose administrative sanctions on Requestor in connection with the Proposed Arrangement under sections 1128A(a)(7) or 1128(b)(7) of the Act, as those sections relate to the commission of acts described in the Federal anti-kickback statute; and (ii) although the Proposed Arrangement, if undertaken, would generate prohibited remuneration under the Beneficiary Inducements CMP, OIG would not impose administrative sanctions on Requestor in connection with the Proposed Arrangement under the Beneficiary Inducements CMP or section 1128(b)(7) of the Act, as that section relates to the commission of acts described in the Beneficiary Inducements CMP.

V. 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 Requestor. 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 Requestor 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 will not proceed against Requestor with respect to any action that is part of the Proposed Arrangement taken in good-faith reliance upon this advisory opinion, as long as all of the

material facts have been fully, completely, and accurately presented, and the Proposed Arrangement in practice comports with the information provided. 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. In the event that this advisory opinion is modified or terminated, OIG will not proceed against Requestor with respect to any action that is part of the Proposed Arrangement taken in good-faith reliance upon this advisory opinion, where all of the relevant facts were fully, completely, and accurately presented and where such action was promptly discontinued upon notification of the modification or termination of this advisory opinion. An advisory opinion may be rescinded only if the relevant and material facts have not been fully, completely, and accurately disclosed to OIG.

Sincerely,

/Susan E. Gillin/

Susan E. Gillin
Assistant Inspector General for Legal Affairs