[*We redact certain identifying information and certain potentially privileged, confidential, or proprietary information associated with the individual or entity, unless otherwise approved by the requestor.*]

Issued: November 30, 2011

Posted: December 7, 2011

[Name and address redacted]

Re: OIG Advisory Opinion No. 11-18

Dear [Name redacted]:

We are writing in response to your request for an advisory opinion regarding an online service that would facilitate the exchange of information between health care practitioners, providers, and suppliers (the "Proposed Arrangement"). Specifically, you have inquired whether the Proposed Arrangement would constitute grounds for the imposition of sanctions under the exclusion authority at section 1128(b)(7) of the Social Security Act (the "Act"), or the civil monetary penalty provision at section 1128A(a)(7) of the Act, as those sections relate to the commission of acts described in section 1128B(b) of the Act, the Federal anti-kickback statute.

You have certified that all of the information provided in your request, including all supplemental submissions, is true and correct and constitutes a complete description of the relevant facts and agreements among the parties.

In issuing this opinion, we have relied solely on the facts and information presented to us. We have not undertaken an independent investigation of such information. This opinion is limited to the facts presented. If material facts have not been disclosed or have been misrepresented, this opinion is without force and effect.

Based on the facts certified in your request for an advisory opinion and supplemental submissions, we conclude that, although the Proposed Arrangement could potentially generate prohibited remuneration under the anti-kickback statute if the requisite intent to

induce or reward referrals of Federal health care program business were present, the Office of Inspector General ("OIG") would not impose administrative sanctions on [name redacted] under sections 1128(b)(7) or 1128A(a)(7) of the Act (as those sections relate to the commission of acts described in section 1128B(b) of the Act) in connection with the Proposed Arrangement. This opinion is limited to the Proposed Arrangement and, therefore, we express no opinion about any ancillary agreements or arrangements disclosed or referenced in your request for an advisory opinion or supplemental submissions.

This opinion may not be relied on by any persons other than [name redacted], the requestor of this opinion, and is further qualified as set out in Part IV below and in 42 C.F.R. Part 1008.

I. FACTUAL BACKGROUND

A. The Background

[Name redacted] (the "Requestor") is a publicly traded company that provides web-based business services to physician practices. The Requestor states that its service offerings are based on proprietary software designed to work on the web, a continuously updated payor knowledge-base, and integrated back-office service operations. Its services support administrative aspects of billing and clinical data management for physician practices, as well as automated and live patient communication services.

The Requestor states that its focus is providing web-based services to help physicians, among other things, achieve faster reimbursement from payors, reduce error rates, improve collection rates, improve patient compliance and satisfaction, and more efficiently manage clinical and billing information. The Requestor currently offers three principal services: (i) [name redacted] (the "Billing Service"), which automates and manages billing-related functions for physician practices and assists clients with non-billing related back-office operations such as appointment scheduling, insurance eligibility verification, and account reconciliation and reporting; (ii) [name redacted] (the "EHR Service"), which automates and manages medical record-related functions for physician practices; and (iii) [name redacted] (the "Messaging Service"), which automates practice communications with patients and includes patient messaging services, live operator services, and a patient web portal.[1]

The Requestor states that its typical customer is a physician or physician group that uses either the Billing Service alone, or both the Billing Service and the EHR Service, with or

[1] We have not been asked to opine on, and express no opinion about, the Requestor's Billing Service, EHR Service, or Messaging Service offerings.

without the Messaging Service. The Requestor generates most of its revenues by charging these clients a monthly subscription fee in the form of either a percentage of collections or a flat monthly fee. According to the Requestor, one of its core strengths is its detailed database of multiple payors' plan and coverage information and billing procedures, which allows the Requestor to automate a substantial portion of the often difficult, time-consuming, and expensive process of generating claims that conform to each plan's specific requirements.

B. The Proposed Arrangement

Under the Proposed Arrangement, the Requestor would offer a new service called [name redacted] (the "Coordination Service"). According to the Requestor, the Coordination Service is intended both to facilitate the exchange of information between health care practitioners, providers, and suppliers (collectively, "Health Professionals"), and to help them keep track of patients receiving services from other Health Professionals.

1. Making Referrals Using the Coordination Service

The Requestor states that, because much of the functional benefit of the Coordination Service is derived from the data maintained within the EHR Service, only Health Professionals who purchase the EHR Service could use the Coordination Service to transmit patient information to other Health Professionals in connection with a referral. According to the Requestor, offering the Coordination Service in combination with the EHR Service (collectively, the "Coordination Service Package") would assist Health Professionals who wish to make referrals ("Ordering Health Professionals") in: (i) sending the demographic, medical record, insurance, and billing information of a patient when the patient is seen by other Health Professionals; (ii) issuing appropriate referral reminders; (iii) tracking communications with other Health Professionals; and (iv) exchanging information about orders, order results, and health care recommendations. The Requestor states that the Coordination Service Package is designed to reduce the expense and opportunity for error associated with communications among Health Professionals, which currently are principally telephone-based and often require multiple contacts, entering and recopying information, and hand-indexing.

Under the Proposed Arrangement, Ordering Health Professionals[2] would use the Coordination Service to access an electronic database (the "Network") to identify Health Professionals to which they would like to make a referral. The Requestor certified that the Network would include contact information (location, fax, and phone numbers) for the

[2] The Requestor anticipates that, in most instances, Ordering Health Professionals would be physicians.

following types of Health Professionals: physicians, laboratories, pharmacies, durable medical equipment suppliers, and imaging providers. To populate the Network, the Requestor would compile contact information provided by, or collected from: (i) the Requestor's existing database of Health Professionals, which is already used in connection with the Billing Service and the EHR Service; (ii) publicly available Health Professional databases; (iii) Requestor clients[3] (for Health Professionals the clients would like to have added to the Network); and (iv) Health Professionals that were not identified via any of the three methods listed above that wish to be included in the Network.[4] There would be no cost to Health Professionals to be included in the Network. The Requestor states that its goal in populating the Network is to make it as complete as possible, given available information and resources. According to the Requestor, the Network already includes the contact information for thousands of Health Professionals that either are existing Requestor clients or have their contact information listed in publicly available sources.

2. Receiving Referrals Using the Coordination Service: Trading Partners

The Requestor would offer Health Professionals that are interested in receiving referrals through the Coordination Service the opportunity to enter into "Trading Partner Agreements" with the Requestor.[5] Health Professionals that enter into Trading Partner Agreements with the Requestor ("Trading Partners") would be able to customize their Network profiles to include, in addition to the standard contact information, information such as their subspecialty areas or particular expertise, their availability for appointments, and any clinical information they require as part of any referral. Trading Partners also would be able to receive electronically transmitted, comprehensive referrals ("Formatted Orders") from Ordering Health Professionals. Formatted Orders would be sent in a standardized format and would contain: (i) the patient's demographic and contact

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[3] The term "Requestor clients" is intended to refer to Health Professionals that purchase the Billing Service, the EHR Service, or the Messaging Service.

[4] Ordering Health Professionals who wish to use the Coordination Service to make a referral to a Health Professional that is not included in the Network would also have the option to manually enter the contact information of the Health Professional to which the referral is to be sent.

[5] The Requestor certified that any Health Professional could enter into a Trading Partner Agreement, and that its efforts to inform Health Professionals of the opportunity to enter into Trading Partner Agreements would be similar to its marketing and sales efforts for its other services. We have not been asked to opine on, and express no opinion about, the Requestor's marketing and sales arrangements.

information; (ii) the Ordering Health Professional's contact information and NPI number; (iii) the Trading Partner's contact information and NPI number; (iv) a verified "insurance package" that would include the insurance plan's name and number, the patient's eligibility status for the insurance package (to the extent available), and, if necessary and available, the prior authorization information and number; and (v) to the extent available, such clinical data as is requested by the Trading Partner.[6] There would be no cost to Health Professionals to become Trading Partners; however, as described more fully below, the Requestor would charge Trading Partners for the services it provides to them.

The Requestor states that the level of service under the Proposed Arrangement would be the highest in cases where both the Ordering Health Professional and the Trading Partner are Requestor clients, because they use the same system and, thus, could easily communicate. For example, an Ordering Health Professional's staff could access precise scheduling information at the time of referral (thus allowing the staff to schedule an appointment for the patient in "real time"), the Trading Partner could easily share test results and reports with the Ordering Health Professional, and the Ordering Health Professional and the Trading Partner could communicate securely and electronically with each other about a patient's condition, without having to speak on the telephone.

In cases where the receiving Health Professional is a Trading Partner but not a Requestor client (i.e., the Health Professional has entered into a Trading Partner Agreement with the Requestor but has not purchased the Billing Service, the EHR Service, or the Messaging Service), the Ordering Health Professional could use the Coordination Service to generate a Formatted Order containing all of the information described above, including any clinical information the Trading Partner specifically requested in its customized profile. The Requestor would endeavor to transmit the Formatted Order in an optimized manner, such as encrypted email or direct electronic interface, or in whatever manner the Trading Partner might specify.

3. Receiving Referrals Using the Coordination Service: Non-Trading Partners

Health Professionals would not be required to become Trading Partners to receive referrals using the Coordination Service; however Health Professionals that are not Trading Partners ("Non-Trading Partners") would not be able to customize their Network profiles in the same manner as Trading Partners, and would not be able to receive Formatted Orders. An Ordering Health Professional could use the Coordination Service to transmit a clean and

[6] The Requestor certified that all Health Professionals—including Ordering Health Professionals and all other Requestor clients—that wish to receive the benefits afforded to Trading Partners must enter into Trading Partner Agreements with the Requestor.

comprehensive referral fax containing the patient's basic demographic and insurance information in a uniform format to a Non-Trading Partner. The Requestor would not perform insurance authorization services in connection with referrals to Non-Trading Partners, and such referrals would include clinical documentation only if the Ordering Health Professional manually attached it. As with referrals to Trading Partners, the Coordination Service Package would allow the Ordering Health Professional to track referrals to Non-Trading Partners, so that any responsive reports or data eventually could be linked to them.

4. Fees Associated with the Coordination Service

Under the Proposed Arrangement, the Requestor would continue to charge Ordering Health Professionals a monthly subscription fee for the EHR Service component of the Coordination Service Package; however, that fee would be discounted.[7] In addition to the monthly subscription fee, the Requestor would charge three types of transaction-based fees for referrals made and received using the Coordination Service: (i) a base fee for transmitting the referral (the "Transmission Fee"); (ii) for referrals made to Trading Partners, a fee for the work performed by the Requestor to record and maintain the Trading Partner's preferences, to attach the clinical documentation in accordance with those preferences, to facilitate the appointment scheduling with the Trading Partner, and to provide "report builder" functionality[8] (the "Functionality Fee"); and (iii) for referrals made to Trading Partners, a fee for the work performed by the Requestor to verify benefit eligibility and obtain the referral authorization (the "Service Fee").

The Requestor would charge the Transmission Fee each time an Ordering Health Professional makes a referral using the Coordination Service; however, the party responsible for paying this fee would vary depending on whether the receiving Health

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[7] The Requestor anticipates that the level of the discount would be approximately 25%-35%. The Requestor states that the discount would reflect both the expectation that the transaction fees associated with the Coordination Service would replace the reduction in EHR Service revenues and the fact that a substantial portion of the work required to create a Formatted Order is embedded in the database maintained through the EHR Service.

[8] This functionality would allow Ordering Health Professionals and Trading Partners to create reports by applying various filters to the data. For example, a Trading Partner could use the report builder to create a report that displays orders from the past month for a certain specialty, including a description of the order, the name of the Ordering Health Professional, and the number of orders from in-network Ordering Health Professionals versus out-of-network Ordering Health Professionals. Ordering Health Professionals could use the reports to assess patient compliance with programs such as medical home programs.

Professional is a Trading Partner or a Non-Trading Partner. In cases where the receiving Health Professional is a Trading Partner, the Trading Partner would pay the Transmission Fee. Trading Partners that are Requestor clients would pay slightly lower fees than Trading Partners that are not Requestor clients, because it would cost the Requestor less to transmit the information from one client to another within its own system. In no case would the Transmission Fee exceed $1.00.

In cases where the receiving Health Professional is a Non-Trading Partner, the Ordering Health Professional would pay the Transmission Fee. The amount of the Transmission Fee charged to the Ordering Health Professional would be the same as the amount that would be charged to a Trading Partner that is not a Requestor client.[9] The Requestor would cap the amount of Transmission Fees paid by Ordering Health Professionals at the difference between the undiscounted monthly fee the Ordering Health Professional would have paid if he or she had purchased only the EHR Service and the discounted monthly fee for the EHR Service. In other words, the total monthly fees assessed on Ordering Health Professionals for the Coordination Service Package would not exceed the total monthly fees assessed on Ordering Health Professionals for the EHR Service alone; however, this cap would not apply to amounts charged to those same Health Professionals when they are operating in their capacity as receiving Health Professionals.

The Functionality Fee would be assessed each time an Ordering Health Professional uses the Coordination Service to make a referral to a Trading Partner. The Service Fee would be assessed each time it is applicable (i.e., each time a benefits verification or referral authorization service is required). Both the Functionality Fee and the Service Fee would always be paid by the Trading Partner.[10] The amount of the Functionality Fee would be fixed, whereas the amount of the Service Fee would vary based on the level of effort

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[9] The Requestor states that, because it believes the receiving Health Professional would benefit most from the transmission of the information, it would be appropriate to charge the receiving Health Professional the Transmission Fee. The Requestor further states that it would not have the authority to charge the Transmission Fee to receiving Health Professionals that are Non-Trading Partners, due to the lack of a contractual relationship. Therefore, in cases where the receiving Health Professional is a Non-Trading Partner, the Requestor would charge the Transmission Fee to the Ordering Health Professional. The Requestor anticipates that, as the market for referral services matures, Transmission Fees paid by Ordering Health Professionals will diminish or be eliminated.

[10] When the receiving Health Professional is not a Trading Partner, the Functionality and Service Fees are not assessed, because the services are not provided.

required to provide the related services.[11] The Requestor certified that the Transmission Fee, the Functionality Fee, and the Service Fee all would be set at fair market value, both individually and in the aggregate.[12]

II. LEGAL ANALYSIS

A. Law

The anti-kickback statute makes it a criminal offense to knowingly and willfully offer, pay, solicit, or receive any remuneration to induce or reward referrals of items or services reimbursable by a Federal health care program. See section 1128B(b) of the Act. Where remuneration is paid purposefully to induce or reward referrals of items or services payable by a Federal health care program, the anti-kickback statute is violated. By its terms, the statute ascribes criminal liability to parties on both sides of an impermissible "kickback" transaction. For purposes of the 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 was to obtain money for the referral of services or to induce further referrals. See, e.g., United States v. Borrasi, 639 F.3d 774 (7th Cir. 2011); 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), cert. denied, 474 U.S. 988 (1985). Violation of the statute constitutes a felony punishable by a maximum fine of $25,000, imprisonment up to five years, or both. Conviction will also lead to automatic exclusion from Federal health care programs, including Medicare and Medicaid. Where a party commits an act described in section 1128B(b) of the Act, the OIG may initiate administrative proceedings to impose civil monetary penalties on such party under section 1128A(a)(7) of the Act. The OIG may

[11] The Requestor would charge different rates for authorization services performed for low complexity, medium complexity, and high complexity orders. The complexity determination would be based on a number of factors, including the skill level needed to perform the service (e.g., administrative vs. clinical staff), payor requirements for materials to prove medical necessity, and the length of the turnaround time to receive authorization.

[12] We are precluded by statute from opining on whether fair market value shall be, or was, paid for goods, services, or property. See 42 U.S.C. § 1320a-7d(b)(3)(A). For purposes of this advisory opinion, we rely on the Requestor's certification of fair market value. If the fees under the Proposed Arrangement are not fair market value, this opinion is without force and effect.

also initiate administrative proceedings to exclude such party from the Federal health care programs under section 1128(b)(7) of the Act.

The Department of Health and Human Services has promulgated safe harbor regulations that define practices that are not subject to the anti-kickback statute because such practices would be unlikely to result in fraud or abuse. See 42 C.F.R. § 1001.952. The safe harbors set forth specific conditions that, if met, assure entities involved of not being prosecuted or sanctioned for the arrangement qualifying for the safe harbor. However, safe harbor protection is afforded only to those arrangements that precisely meet all of the conditions set forth in the safe harbor.

We address below whether the safe harbor for referral services, 42 C.F.R. § 1001.952(f), is applicable to the Proposed Arrangement. It provides that, for purposes of the anti-kickback statute, the term "remuneration" does not include payments or exchanges of anything of value between a referral service and a participant in the service, provided certain conditions are met. Among those conditions are requirements that referral fees be assessed uniformly against all participants and that certain disclosures be made to each person seeking a referral.

B. Analysis

The efficient exchange of health information between Health Professionals is a laudable goal. When the exchange takes place in the context of patient referrals, we must evaluate whether the means used to achieve that goal implicate the anti-kickback statute.

Under the Proposed Arrangement, Ordering Health Professionals would use the Coordination Service to exchange patient information with Health Professionals to which they make referrals. In cases where the Health Professionals receiving the referrals are Trading Partners, the Requestor would perform certain value-added services in connection with transmitting the information. The Requestor would receive payment from either the Ordering Health Professionals or the Trading Partners for transmitting the information, and from the Trading Partners for any value-added services it provides. We must consider whether such payments, when they are made by the Trading Partners, constitute remuneration in return for the Requestor's: (i) influencing Ordering Health Professionals to refer Federal health care program beneficiaries to Trading Partners, or (ii) otherwise arranging for the furnishing of items or services for which payment would be made by a Federal health care program.

In addition, Ordering Health Professionals who purchase the Coordination Service Package would receive a discount on their monthly EHR Service subscription fees. Under the Proposed Arrangement, Transmission Fees paid by Ordering Health Professionals for

referrals to Non-Trading Partners would be capped at the total dollar amount of this discount. In effect, each time an Ordering Health Professional uses the Coordination Service to make a referral to a Non-Trading Partner, the discount would be reduced by an amount equal to or less than $1.00, until it disappeared entirely. Thus, the Proposed Arrangement's fee structure could provide a financial incentive to Ordering Health Professionals to refer to Trading Partners rather than Non-Trading Partners, to avoid a reduction in the EHR Service discount. We must consider whether this fee structure could constitute indirect remuneration from the Trading Partners to the Ordering Health Professionals to induce referrals.

Having concluded that the anti-kickback statute is implicated by the Proposed Arrangement, we consider whether it qualifies for protection under the safe harbor for referral services. We conclude that it does not. It fails to meet certain of the safe harbor's requirements. In fact, it is very different from the type of referral service contemplated by the safe harbor. The safe harbor contemplates a referral service that helps beneficiaries make their initial contact with the health care system before a relationship of trust is established with a particular health care provider or supplier. See Preamble to Final Rule: OIG Anti-Kickback Provisions, 56 Fed. Reg. 35,952, 35,960 (July 29, 1991). Here, the Coordination Service merely facilitates referrals through the transmission of information. The actual referrals are made by Health Professionals. We therefore must analyze the Proposed Arrangement for compliance with the anti-kickback statute by taking into account the totality of the facts and circumstances. For the reasons set forth below, we conclude that the facts and circumstances of the Proposed Arrangement, in combination, adequately reduce the risk that the remuneration provided under the Proposed Arrangement could be an improper payment for referrals or for arranging for referrals of Federal health care program business.

First, the Requestor would offer a comprehensive Network, within which all Health Professionals in a marketplace could participate, from which an Ordering Health Professional could select a receiving Health Professional. Although participants must pay the Requestor to obtain specific services, no payment would be required simply to be included in the Network. The Requestor would not control or influence the decision as to which Health Professional a referral would be made.

Second, the Requestor certified that the Transmission Fee, the Functionality Fee, and the Service Fee would—both individually and in the aggregate—reflect the fair market value of the actual services the Requestor would provide to the Health Professionals. The Requestor's services would provide value that is unrelated to inducing referrals,[13] and the

[13] The independent value of the Requestor's services distinguishes the Proposed Arrangement from arrangements in which a party pays a fee for priority in receiving referrals, rather than for actual services provided.

fees the Requestor would charge for these services would not vary based on the value of the items or services that a receiving Health Professional might ultimately provide to Federal health care program beneficiaries.

Third, although the Requestor would charge the Transmission Fee on a "per-click" basis, the use of a transaction-based pricing model is reasonable under these circumstances. Importantly, under the Proposed Arrangement, the Requestor would assess the Transmission Fee each time an Ordering Health Professional makes a referral to a receiving Health Professional using the Coordination Service, regardless of whether the patient follows through and actually receives items or services from the receiving Health Professional. The Functionality and Service Fees would be charged only to Trading Partners, and would reflect the work the Requestor must perform to, among other things, record and maintain the Trading Partners' preferences and attach the clinical documentation in accordance with those preferences, verify benefit eligibility, and obtain the referral authorization. As with the Transmission Fee, the Requestor would charge the Functionality Fee and, when applicable, the Service Fee, each time an Ordering Health Professional makes a referral to the Trading Partner using the Coordination Service, regardless of whether the patient follows through and actually receives items or services from the Trading Partner. The fee structure therefore is distinguishable from problematic "success fees" that tie compensation directly or indirectly to Federally payable business.

Fourth, we conclude that the Proposed Arrangement's fee structure would be unlikely to influence an Ordering Health Professional's referral decisions in a material way. The discounts on the monthly EHR Service subscription fees the Requestor would offer to Ordering Health Professionals, standing alone, would not induce an Ordering Health Professional to refer to any particular person or entity. With respect to the Transmission Fee, it is possible that charging an Ordering Health Professional a fee for transmitting information in connection with a referral to a Non-Trading Partner—but not for transmitting information to a Trading Partner—could influence the Ordering Health Professional's referral decisions. However, we believe that the following two factors, in combination, would minimize this risk. First, the amount of the Transmission Fee is low (less than or equal to $1.00); the fee therefore would be unlikely to sway an Ordering Health Professional's judgment regarding to which Health Professional to refer in any particular instance. Second, the aggregate amount of Transmission Fees that could be charged to an Ordering Health Professional would be capped at the difference between the Ordering Health Professional's undiscounted monthly EHR Service fee and the discounted monthly fee charged for the EHR Service component of the Coordination Service Package. In other words, the cap would serve to ensure that Ordering Health Professionals would never pay more, in their capacity as Ordering Health Professionals, for the Coordination Service Package than they would have paid for the EHR Service alone. Once an Ordering Health

Professional refers enough patients to Non-Trading Partners to reach the cap, additional referrals to Non-Trading Partners would have no financial consequences at all.

Fifth, the Coordination Service is intended to facilitate the exchange of information between Health Professionals, not to limit the pool of Health Professionals to which an Ordering Health Professional may refer. Ordering Health Professionals could provide the Requestor with the contact information for any Health Professional they would like to have included in the Network. The Requestor also would employ several other measures to populate the Network, and certified that its goal is to make the Network as complete as possible. Moreover, Ordering Health Professionals could manually enter the contact information of a receiving Health Professional that is not in the Network, and could continue making referrals through vehicles other than the Coordination Service. Thus, neither patient freedom of choice nor provider freedom of choice would be compromised under the Proposed Arrangement.

Finally, a Trading Partner's payment of the Transmission, Functionality, and Service Fees to the Requestor would not provide the Trading Partner with enhanced access to a referral stream vis-à-vis Non-Trading Partners. Health Professionals make referrals based on a number of factors, including the reputation of, and their level of familiarity with, the receiving Health Professional. Although the added convenience and ease of information exchange offered by Trading Partners might provide them with an advantage over Non-Trading Partners, the Non-Trading Partners would not be disadvantaged with respect to, nor precluded from, the opportunity to receive and respond to referrals made through the Coordination Service in the first instance.

Based on the totality of the facts and circumstances, and for all of the reasons stated above, we believe that the risk that the remuneration provided under the Proposed Arrangement could be an improper payment for referrals or for arranging for referrals of Federal health care program business is sufficiently low. Therefore, we would not subject the Requestor to administrative sanctions in connection with the anti-kickback statute for the Proposed Arrangement.[14]

III. CONCLUSION

Based on the facts certified in your request for an advisory opinion and supplemental submissions, we conclude that, although the Proposed Arrangement could potentially

[14] The Requestor also inquired whether the Proposed Arrangement would constitute grounds for the imposition of sanctions under the civil monetary penalty provision prohibiting inducements to beneficiaries, section 1128A(a)(5) of the Act. We conclude that it would not.

generate prohibited remuneration under the anti-kickback statute if the requisite intent to induce or reward referrals of Federal health care program business were present, the OIG would not impose administrative sanctions on [name redacted] under sections 1128(b)(7) or 1128A(a)(7) of the Act (as those sections relate to the commission of acts described in section 1128B(b) of the Act) in connection with the Proposed Arrangement. This opinion is limited to the Proposed Arrangement and, therefore, we express no opinion about any ancillary agreements or arrangements disclosed or referenced in your request for an advisory opinion or supplemental submissions.

IV. LIMITATIONS

The limitations applicable to this opinion include the following:

- This advisory opinion is issued only to [name redacted], the requestor of this opinion. This advisory opinion has no application to, and cannot be relied upon by, any other individual or entity.

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

- This advisory opinion is applicable only to the statutory provisions specifically noted above. No opinion is expressed or implied 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.

- This advisory opinion is limited in scope to the specific arrangement described in this letter and has no applicability to other arrangements, even those which appear similar in nature or scope.

- No opinion is expressed herein regarding the liability of any party 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.

The OIG will not proceed against [name redacted] 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. The 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, the OIG will not proceed against [name redacted] 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 the OIG.

Sincerely,

/Lewis Morris/

Lewis Morris
Chief Counsel to the Inspector General