

[This template is offered as a model format for submitting an advisory opinion request. Use of the template is voluntary, and OIG recognizes that this template may not accommodate every request for an advisory opinion. Please consult the regulations at 42 C.F.R. Part 1008 for additional requirements governing the advisory opinion process. If an advisory opinion request does not contain all of the information required by 42 C.F.R. § 1008.36, or if OIG believes it needs additional information prior to rendering an advisory opinion, OIG may, at any time, request information or documents that it deems necessary.]

Submitted as a PDF via email to OIGAdvisoryOpinions@oig.hhs.gov

Chief, Industry Guidance Branch
Office of Counsel to the Inspector General
U.S. Department of Health and Human Services

Re: Request for Advisory Opinion

Dear Industry Guidance Branch Chief:

On behalf of *[insert name of each requestor]*, we request an advisory opinion from the Office of Inspector General regarding the arrangement described below (the “Arrangement”).¹

A. Identity of the requestor²

[Name]

[Address]

[Tax Identification Number or Social Security Number, if the requestor is an individual]

B. Owned and Controlled Entities

[Insert full and complete information as to the identity of each entity owned or controlled by the requestor, and of each person with an ownership or control interest³ in each requestor, if the requestor is an entity. If the list is long, you may wish to provide it as an attachment, the title of which should cross-reference this section (i.e., “Section B. Owned and Controlled Entities”).]

¹ We use the term “Arrangement” throughout the template to refer to both existing and proposed arrangements. For clarity, however, we recommend that advisory opinion requests involving proposed arrangements refer to such arrangements as a “Proposed Arrangement.”

² This template refers to the “requestor”; however, if more than one requestor is requesting an advisory opinion, include the applicable information for each requestor.

³ “Person with an ownership or control interest” is defined in section 1124(a)(3) of the Social Security Act (the Act) and in regulations at 42 C.F.R. Part 420.

C. Identity of Other Parties

[Insert the name and address of all other actual or potential parties to the Arrangement, to the extent known to the requestor.]

D. Contact Person

[Insert the name, title, mailing address, daytime telephone number, and email address of a contact person for this advisory opinion request. This is the person OIG will contact in connection with any questions or requests for additional information related to this advisory opinion request.]

E. Fees

[Optional] The requestor requests a written estimate of the cost involved in processing the advisory opinion request.

[Optional] The requestor wishes to designate a triggering dollar amount of *[insert dollar amount]*.⁴

F. Trade Secrets or Privileged or Confidential Information

[Designate any information or documents that the requestor reasonably believes are trade secrets or are privileged or confidential commercial or financial information and are not subject to disclosure under the Freedom of Information Act.]

G. Scope of Issues Addressed

The requestor requests that OIG issue an advisory opinion on the following issue(s):

[Select at least one of the following issues on which the requestor seeks an advisory opinion, and delete issues that are not relevant to this request.]

1. What constitutes prohibited remuneration within the meaning of section 1128B(b) or section 1128A(i)(6) of the Act.
2. Whether the Arrangement satisfies the criteria set forth in section 1128B(b)(3) of the Act for activities that do not result in prohibited remuneration.

⁴ The triggering dollar amount is intended to accommodate requestors who may want to limit the costs of receiving an advisory opinion. If OIG estimates that the costs of processing the advisory opinion have reached, or are likely to exceed, the designated triggering dollar amount, OIG will notify the requestor. See 42 C.F.R. § 1008.31(d).

3. Whether the Arrangement satisfies the criteria set forth in 42 C.F.R. § 1001.952 for activities that do not result in prohibited remuneration. [*Please specify which provision(s) of 42 C.F.R. § 1001.952 are the subject of the request.*]
4. What constitutes an inducement to reduce or limit medically necessary services under section 1128A(b) of the Act to Medicare or Medicaid program beneficiaries.
5. Whether any activity, or proposed activity, constitutes grounds for the imposition of sanctions under section 1128 of the Act. [*Please identify the specific subsections of section 1128 that are the subject of the request.*]
6. Whether any activity, or proposed activity, constitutes grounds for the imposition of sanctions under section 1128A of the Act. [*Please identify the specific subsections of section 1128A that are the subject of the request.*]
7. Whether any activity, or proposed activity, constitutes grounds for the imposition of sanctions under section 1128B of the Act. [*Please identify the specific subsections of section 1128B that are the subject of the request.*]

H. Status of Arrangement

[State whether the arrangement that is the subject of the advisory opinion request is an existing arrangement or a proposed arrangement that the requestor in good faith plans to undertake.]

I. Description of the Arrangement

[Insert a complete and specific description of the arrangement, including all relevant information bearing on the arrangement and on the circumstances of the conduct, all relevant background information, and all collateral or oral understandings (if any). Attach copies of all operative documents, if any, or for proposed arrangements, provide drafts of documents, models of documents, or detailed narrative descriptions of the proposed terms.]

J. Legal Analysis

[Optional: *Provide a narrative description of how the requestor would evaluate the Arrangement under the applicable law, as identified in section G., and why the requestor believes OIG should opine favorably for each of the issues for which the requestor seeks an advisory opinion, as identified in section G.*]

K. CMS Advisory Opinion

[State whether an advisory opinion in accordance with part 411 of Title 42 has been or will be requested from CMS about the arrangement that is the subject of the advisory opinion request.]

L. Certification

[Provide the following certification signed by: (i) the requestor, if the requestor is an individual; (ii) the CEO or comparable officer, if the requestor is a corporation; (iii) the managing partner, if the requestor is a partnership; or (iv) the managing member or comparable person, if the requestor is a limited liability company. For purposes of this certification, OIG accepts digital signatures.]

Pursuant to 42 C.F.R. § 1008.38, the undersigned certifies that with knowledge of the penalties for false statements provided by 18 U.S.C. § 1001 and with knowledge that this request for an advisory opinion is being submitted to the Department of Health and Human Services, I certify that all of the information provided is true and correct, and constitutes a complete description of the facts regarding which an advisory opinion is sought, to the best of my knowledge and belief.

[If the request involves a proposed arrangement (i.e., an arrangement that is not yet implemented), add the statement below to the certification statement for signature. This statement may be made contingent upon receiving a favorable advisory opinion by adding the optional language below in brackets.]

The Proposed Arrangement described in this request for an advisory opinion is one that the requestor in good faith plans to undertake *[if the OIG issues a favorable advisory opinion]*.