

Report on Medicare Compliance Volume 32, Number 31. August 28, 2023

Advisory Opinion Says No to Turnkey Entity, the Answer the Requester Wanted, Lawyers Say

By Nina Youngstrom

In a new advisory opinion, the HHS Office of Inspector General (OIG) gave a big thumbs down to a proposed arrangement in which a company that provides intraoperative neuromonitoring (IONM) during surgeries would help its surgeon clients set up a turnkey physician-owned entity to provide the same services.^[1] OIG said the arrangement would implicate the Anti-Kickback Statute (AKS) for several reasons, including the risk the arrangement would induce referrals of federal health care program business—even if it were carved out.

Unfavorable advisory opinions are few and far between, and this time around the requestor obviously hoped for bad news, said attorney Larry Vernaglia, with Foley & Lardner LLP in Boston. The requestor is describing what a competitor plans to do and wants to nip it in the bud, he said. “OIG’s hands are tied because whoever submitted this certified they’re going to enter this business if they get a favorable opinion. The thing that gets my goat is when you ask the question the way they did, of course they’ll get the answer they got.” The problem is, the requestor described the shadiest version of a contractual joint venture when “there may have been more favorable facts and characterizations that could have been presented but clearly weren’t,” Vernaglia said.

This document is only available to subscribers. Please log in or purchase access.

[Purchase Login](#)