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OIG Reels in the Employment Safe Harbor: Recent Advisory Opinion Signals Risks for Sign-On Bonuses in Home Care

Key Takeaways:

- In a rare unfavorable advisory opinion, OIG concluded that certain sign-on bonuses for home care workers are a risk under the federal Anti-Kickback Statute, despite historical reliance on the Employment Safe Harbor.
- Home care providers who rely on sign-on or other recruitment bonuses to attract family caregivers should evaluate their current practices to ensure they remain compliant.

Some home care agencies use sign-on bonuses and other upfront incentives to remain competitive in the face of staffing shortages. In Advisory Opinion No. 25-12, issued December 30, 2025, OIG declined to approve a home care agency's proposed sign-on bonus program for family caregivers or attendants, concluding that the arrangement would pose a substantial risk under the AKS and the civil prohibition on beneficiary inducement (Beneficiary Inducements CMP).[1] This opinion underscores that recruitment strategies can create significant compliance risk if not carefully structured.

The Proposed Arrangement.

The opinion evaluates a Medicaid-enrolled home care agency providing in-home support services under a Medicaid program that allows beneficiaries to select their own caregivers, who may include family members or guardians. The agency proposed advertising and offering sign-on bonuses to attract new caregivers, including those who could influence or determine a beneficiary's choice of home care provider. The requestors specifically represented to OIG that the purpose of the bonuses would be to attract attendants to work for the requestor's agency over competitors.

OIG's Analysis and Conclusions.

OIG analyzed the proposed sign-on bonuses under the Employment Safe Harbor,[2] which shields payments paid by an employer to a "bona fide" employee. OIG acknowledged that sign-on bonuses are "ordinary offerings in the course of employment contracting" and are "often low risk" under the AKS. In this case, however, OIG concluded that the sign-on

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bonuses would not fall within the Employment Safe Harbor because of an “inextricable link” between hiring a family caregiver and the referral of a particular client. According to OIG, each sign-on bonus results in an “all but guaranteed referral.”

OIG appeared to focus on the *form* and *timing* of the bonus offer. The opinion notes that prospective family caregivers “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.” Thus, the sign-in bonus would not be in exchange for provision of covered items or services under an employment relationship—which would be protected by the Employment Safe Harbor—but would instead be paid solely to reward referrals. The opinion also notes that the bonus would be advertised “only as to the amount of the bonus,” i.e., the recruitment and marketing materials would attach no particular conditions to the bonus, further suggesting, in OIG’s view, that the bonus would reward referrals rather than function as employment compensation.

After concluding that the safe harbor was not met, OIG analyzed the potential fraud and abuse risk presented by sign-on bonuses, noting concerns about patient steering, unfair competition and quality of care. OIG appears concerned that an ever-escalating war over sign-on bonus amounts could distort competition in the home care marketplace and cause agencies to overspend on signing bonuses at the expense of ensuring high quality care. Interestingly, OIG also concluded that, in this circumstance, the sign-on bonus paid to family caregivers implicated the Beneficiary Inducements CMP. Although typically only applicable to payments made directly to beneficiaries, OIG reasoned that family caregivers are “in a position to select” the home care agency for the beneficiary, and the sign-on bonus could influence that selection.

Takeaways for Home Care Agencies.

While the advisory opinion only applies to the specific facts presented and the requesting party, it signals a potential narrowing of OIG’s view of the otherwise expansive Employment Safe Harbor. In light of this opinion, Medicaid-participating home care agencies should carefully evaluate their sign-on bonus programs to determine whether updates are necessary to maintain compliance with current OIG perspectives. Providers should evaluate factors such as:

- The relationship between the recipient of the sign-on bonus and potential client referrals;
- The timing of the advertisement, offer and payment of a sign-on bonus;
- The intent and purpose of the bonus program; and
- Other (non-referral related) factors relevant to the provider’s decision to offer a bonus.

The opinion does not address many variations on compensation and bonus arrangements that could dramatically alter the risk profile under different circumstances, leaving an opportunity for home care providers to innovate and develop compensation models that achieve their commercial goals while reducing risk of enforcement. Should you have any questions regarding this new advisory opinion and its impact on your recruiting practices, please reach out to one of the authors or your regular Polsinelli attorney.

[1] 42 U.S.C. § 1320a-7a(a)(5).

[2] 42 U.S.C. § 1320a-7b(b)(3)(B); 42 C.F.R. § 1001.952(i).