



## OIG Advisory Opinion on Spinal Implants

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This is a really interesting Advisory Opinion (<https://oig.hhs.gov/documents/advisory-opinions/792/AO-21-06.pdf>) issued by the OIG regarding a proposal under which a spinal implant manufacturer would offer its products to hospitals at a reduced price if the hospitals agree to assume certain duties related to the products (the “Proposed Arrangement”).

Specifically, the requestor inquired whether the Proposed Arrangement would constitute grounds for the imposition of sanctions under: (i) the civil monetary penalty provision for a hospital’s payment to a physician to induce the reduction or limitation of medically necessary services to Medicare or Medicaid beneficiaries under the physician’s direct care, sections 1128A(b)(1)–(2) of the Social Security Act (the “Act”); or (ii) the exclusion authority at section 1128(b)(7) of 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 antikickback statute”).

The OIG indicated it would not violate the statute(s) or Act based on the facts submitted but the requestor needed to keep in mind that OIG did not perform an independent evaluation.