**8.128B SOLICITING OR RECEIVING KICKBACKS IN CONNECTION WITH MEDICARE OR FEDERAL HEALTH CARE PROGRAM PAYMENTS
(42 U.S.C. § 1320a-7b(b)(1)(A))**

 The defendant is charged in [Count \_\_\_\_\_\_ of] the indictment with [soliciting] [receiving] kickbacks in connection with [Medicare] [federal health care program] payments in violation of Section 1320a-7b(b)(1)(A), of Title 42 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

 First, the defendant knowingly and willfully [solicited] [received] [*specify remuneration alleged*];

 Second, the [*specify remuneration alleged*] was [solicited] [paid] primarily in order to

[induce] [and] [or] [in exchange for] the referral of a patient insured by [Medicare] [*specify*

*federal health care program*] for [furnishing] [arranging for the furnishing] of an item or service;

[and]

 Third, the patient’s items or services [furnished] [arranged to be furnished] were covered, in whole or in part, by [Medicare] [specifiy federal health care program]; [and]

 [Fourth, [Medicare] [*specify federal health care program*] is a federal health care program.]

**Comment**

 This instruction is largely based on the Eighth Circuit’s Model Criminal Instruction 6.42.1320, as modified per the Ninth Circuit’s decision in *United States v. Hong*, 938 F.3d 1040, 1048-49 (9th Cir. 2019).

*Approved 12/2019*