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## EXECUTIVE SUMMARY

Jim Kucik, President  
Synergetic Marketing Sales, Inc.  
4305 Pineview Drive, Suite 100  
Commerce Township, Michigan 48390

### RE: SYNERGETIC WEB BASED MEDICAL REFERRAL PROGRAM

Dear Jim:

Pursuant to our discussion, this Executive Summary sets forth a federal law analysis of the Synergetic Marketing Sales, Inc. ("Synergetic") Web Based Medical Referral Program (the "Program"). As requested, we have limited our review to include an analysis of the Program under the Federal Anti-kickback Statute (the "AKS"), the Federal Civil Monetary Penalty Law (the "CMPL"), and the Health Insurance Portability and Accountability Act ("HIPAA").

#### The Program

Synergetic is a Michigan corporation engaged in providing web-based marketing and promotional services to its clients (the "Providers"). The Providers will comprise, for example, dentists, chiropractors, and cosmetic surgeons. Pursuant to the Program, Synergetic will enter written agreements with the Providers (the "Services Agreements") under which Synergetic assists such Providers with the promotion of their professional practices through a patient web-based referral marketing system developed by Synergetic. The Providers agree to provide Synergetic with certain patient contact information (in a manner that complies with HIPAA) that allows Synergetic to contact the patients through e-mail and other web-based mechanisms and to provide the patients with an opportunity to receive certain financial incentives for referring prospective patients to the Provider through e-mail or other social networking websites (e.g., Facebook). The incentives provided under the Program are structured with certain parameters designed to minimize risk based upon federal government guidance related to the provisions of items or services to patients and potential referral sources.<sup>1</sup> Importantly, the Program is not applicable to individuals that participate with Medicare, Medicaid, or any other state or federal health care programs.

In exchange for the marketing/promotional and administrative services provided by Synergetic under the Program, the Provider pays Synergetic an initial one-time set up fee, a monthly flat fee, and a bonus incentive fee structure.<sup>2</sup>

#### The AKS and CMPL

As set forth under the Program, importantly, in order to be eligible for such program, referred individuals must not participate with Medicare, Medicaid or any other state or federal health care programs. Thus, the AKS is not applicable. Moreover, the CMPL also does not apply because any incentives provided under the Program will not involve beneficiaries of any federal healthcare programs. Notably, however, the incentives provided to referring patients and the referred individuals (as detailed in the Overview) are subject to certain parameters that were designed to minimize some of the risks that are articulated in guidance issued by the Office of Inspector General (the "OIG") addressing the provision of items or services to Medicare beneficiaries.

Further, as discussed above, the Program also involves Services Agreements between Synergetic and the Providers under which Synergetic receives an initial one-time set up fee, a monthly flat fee, and a bonus fee in exchange for

<sup>1</sup> For a comprehensive description of the Program, including the parameters for incentives, see the Synergetic Web Based Medical Referral Program Overview (the "Overview").

<sup>2</sup> The bonus incentive is not directly tied to completed referral offers under the Program.

the promotional/marketing and administrative services that it provides to the Provider using its web-based program. As noted above, importantly the Program does not involve federal or state healthcare programs and thus, the Services Agreements do not fall within the purview of the AKS. Notwithstanding the foregoing sentence, however, as structured, Synergetic will never receive fees from the Provider based directly upon completed orders. Notably, Synergetic is compensated by the Providers (under a flat fee structure and under a bonus structure that is not directly tied to completed referrals) in exchange for the bona-fide services it provides to the Providers. Although the AKS is not directly applicable, it should be noted that the fee structure was designed to minimize some of the risks articulated by the OIG in its guidance addressing marketing and administrative services agreements between parties in a position to arrange for referrals.

### HIPAA

As we have discussed, patient health information is protected by (“HIPAA”).<sup>3</sup> As described above, Synergetic receives certain patient information (including without limitation patient contact information and information regarding patients’ attendance at appointments with the Providers) from the Providers under the Program. Synergetic then uses and discloses such information as necessary to perform its obligations under its marketing and related administrative service agreements with the Providers. Under the Program, Synergetic is a “business associate” of the Providers for purposes of HIPAA. As a business associate, Synergetic is subject to numerous federal compliance obligations under HIPAA related to the privacy and security of patient information. Synergetic has structured its Program in a manner designed to comply with HIPAA. For example, Synergetic will enter a HIPAA Business Associate Agreement with each of the Providers. Synergetic will also require each patient or potential patient who participates in the Program to provide a valid HIPAA marketing authorization before participation.

Very truly yours,  
The Health Law Partners, P.C.



Adrienne Dresevic, Esq.



Kathryn Hickner-Cruz, Esq.

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<sup>3</sup> Patient health information is also subject to state privacy laws, which are not addressed by this letter since such a review is beyond the scope of our engagement by Synergetic