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| Area: | <i>Corp CCE - Corporate Compliance & Ethics</i> |
| References: | |

Compliance with Stark Law and Anti-Kickback Statute

PURPOSE

To reinforce American Health Companies, Inc. d/b/a American Health Partners (AHP) commitment to compliance with federal and state laws, regulations, and rules.

POLICY

It is the policy of AHP to fully comply with the Stark and Anti-Kickback laws and regulations at all times. To that end, each financial relationship AHP has with a physician or a physician's immediate family member, shall meet a Stark exception, and if applicable, meet an Anti-Kickback Statute safe harbor where possible. All such financial relationships must be reviewed by AHP's Legal Department.

Other persons or entities contracting with AHP may also be in a position to influence the referral of patients, therefore all contracts with persons or entities providing health care services are also subject to review by the Legal Department.

Stark Law

The Stark Law was enacted to prevent referral sources such as physicians and physician extenders from inappropriately profiting from referrals. The Stark Law prohibits a physician from referring a patient for certain services to be reimbursed by federal health care programs to an entity with which the physician has an ownership interest or compensation arrangement if payments for the services furnished under the referral are to be made by the Medicare program.

Since it is a civil strict liability statute, no intent is required to violate the Stark Law. As such, if the Stark Law applies to an arrangement between a hospital and a physician and if the arrangement does not meet an exception of the Stark Law, then both parties have violated the Stark Law regardless of the extent of their attempts to comply with it.

As a civil statute, the Stark Law does not subject violators to imprisonment. However, because intent is not required to violate the statute, violations occur more frequently and are easier for the government to prove. Violations of the Stark law may result in denial of payment for services, repayment of reimbursed services and monetary penalties up to \$15,000 per violation and \$100,000 per arrangement or scheme. Additionally, a knowing Stark violation may result in exclusion from Federal healthcare program participation.

The Stark Laws are enforced by the Department of Health and Human Services, Centers for Medicare and Medicaid Services. Designated Health Services are specifically defined by CPT code and generally include services provided by hospitals such as laboratory, physical therapy, radiology, durable medical equipment, home health, pharmaceuticals, inpatient and outpatient services.

The various exceptions that are available under the Stark Law include Exceptions specific to Compensation Arrangements. These exceptions include the following types of arrangements:

- Rental of Office Space
- Rental of Equipment
- Employment Relationships
- Personal Service Arrangements
- Physician Recruitment
- Isolated Transactions (e.g., one-time sale of property)
- Arrangements with Hospitals (unrelated to DHS)
- Group Practice Arrangement with Hospital
- Payments from Physicians
- Charitable Donations by Physicians
- Non-Monetary Compensation
- Medical Staff Incidental Benefits
- Risk-Sharing Arrangements
- Compliance and Ethics Training
- Indirect Compensation
- Referral Service Programs
- Obstetrics Malpractice Coverage Assistance
- Professional Courtesy
- Retention Payments in Underserved Areas
- Community-Wide Health Information Systems
- Electronic Prescribing Services
- Donation of Electronic Health Record items and Services

Additional guidance addresses topics such as anti-mark-up provisions; percentage-based compensation arrangements; per-click arrangements; stand-in-the-shoes principles; under-arrangements transactions; periods of disallowance and amendments to agreements. For additional information on the Stark laws, contact AHP Legal Department.

Anti-Kickback Statute

The Anti-Kickback Statute is a criminal statute. It prohibits any knowing or willful solicitation or acceptance of any type of remuneration intended to induce referrals for health services that are reimbursable by the federal government. It is important to recognize that remuneration can be in the form for below-market rent, free services, free graduate medical education, etc.

Violation of the Anti-Kickback Statute is a felony and punishable with criminal penalties up to \$25,000 in fines and five years in prison and civil penalties up to \$50,000 in fines per violation. Additionally, the government can elect to exclude the provider from Federal healthcare program participation.

The Anti-Kickback Statute was enacted in 1972 and is entitled "Criminal Penalties for Acts Involving Federal Health Care Programs". This law is found in the Social Security Act and is enforced by the Department of Justice. In 1987, Congress required the Office of Inspector General to develop safe harbors for various

payment and business practices that, while potentially prohibited by the law, would not be prosecuted. There are 21 Safe Harbors published for the Anti-Kickback Statute. The Anti-Kickback safe harbors are different than the Stark exceptions. The Anti-Kickback Statute is a criminal statute, so the government must prove an intent to induce referrals in order to take action against AHP or individual. The safe harbors provide guidance which can be followed. Failure to meet all criteria in a safe harbor does not necessarily mean that a violation of the Statute has occurred.

Safe harbors are available for areas such as:

- Investments in large publicly held health care companies
- Joint ventures
- Space rental
- Equipment rental
- Personal services and management contracts
- Sales of retiring physicians' practices to other physicians
- Referral services
- Warranties
- Discounts
- Employee compensation
- Group purchasing organizations
- Waivers of Medicare Part A inpatient cost-sharing amounts
- Physician recruiting in underserved areas
- Obstetrical malpractice insurance subsidies for underserved areas
- Sales of practices to hospitals in underserved areas
- Investments in ambulatory surgical centers
- Investments in group practices
- Referral arrangements for specialty services
- Cooperative hospital service organizations

The factors required to fall within these safe harbors vary.

Contact the Legal Department for additional information regarding the steps required to satisfy a safe harbor, or for additional information about the Stark Law regulations.

It is the policy of AHP that items or services should not be provided to physicians or their immediate family members without the prior approval of the Legal Department. This includes discounts, meals, and tickets to events, CME credits or anything that would be considered of value to the physician.

PROCESS

AHP is committed to conducting its business transactions and practices in compliance with the Stark Law and Anti-Kickback Statute and analogous state laws. Employees and Contractors shall comply with the requirements of the Stark Law and Anti-Kickback Statute and these state laws as well as all related AHP policies and procedures.

Employees and Contractors shall not offer or provide anything of value to Customers to induce them to purchase an AHP product, or arrange for any such activity in violation of the Stark Law or Anti-Kickback Statute or state law.

Employees and Contractors shall report suspected violations of the Stark Law or Anti-Kickback Statute and/or related AHP policies and procedures. In addition, Employees and Contractors may direct any questions

regarding the Stark Law Anti-Kickback Statute and related AHP policies and procedures to their supervisor, the Facility Compliance Officer, the Regional Compliance Director, the Compliance and Ethics Department, the Legal Department or via the Confidential Disclosure Program.

All agreements between AHP or its affiliates and any other entity that involves the referral or transfer of any patient to or by an AHP affiliate shall be approved by the CEO or his or her designee, the Chief Compliance and Ethics Officer and the Legal Department.

Any such agreement:

1. Shall be in writing;
2. Shall be negotiated only by Provider Senior Manager and/or Regional Senior Managers or their designees with input from the legal department;
3. Shall be signed by all parties;
4. Shall specify all obligations of the parties;
5. Shall specify the fee or payment, if any, which shall be set at fair market value for the items or services provided;
6. Shall, when taken, be reasonable in its entirety;
7. Shall not take into consideration the value or volume of referrals provided by or to AHP except as is specifically permitted by the "safe harbors" found at 42 C.F.R. Part 1001.952;
8. Shall not involve free or discounted goods or services or goods or services below fair market value to induce a referral to or by AHP or its affiliates except as specifically permitted by the "safe harbors"; and
9. Shall not involve the referral or transfer of any patient to or by AHP or its affiliates to induce the other party to refer or obtain referrals of patients from AHP or its affiliates.

Attachments:

No Attachments

Approval Signatures

| Approver | Date |
|---|---------|
| Ben Sparks: AHPLC [LC] | 04/2019 |
| Kelly Thomas: Chief Compliance Officer [LC] | 04/2019 |
| Kelly Thomas: Chief Compliance Officer [LC] | 04/2019 |
| Laura Carrico: Director of Compliance | 04/2019 |