Subject: Non-Monetary Compensation and Medical Staff Incidental Benefits

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Department: Enterprise Risk Management Services

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☒ Revised
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Executive Sponsor: SVP/Chief Risk Officer

Policy Owner: AVP Compliance and Information Security

Approved by: Rod Hochman, MD - President/CEO

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Scope: All Providence Health & Services and its Affiliates\(^1\) provider-based departments (collectively known as “Providence”). This is a management level policy approved by Leadership Council and signed by the President/CEO.

Purpose: To establish expectations and limitations for Providence entities surrounding the non-monetary compensation and medical staff incidental benefits exceptions of the Federal “Stark” law and to incorporate relevant guidance issued by the Office of Inspector General (“OIG”) with respect to certain arrangements that may potentially implicate the Federal “Anti-kickback” statute. Stark prohibits a physician from referring Medicare beneficiaries for designated health services, which includes among other services, all inpatient and outpatient services, to entities with which the physician (or an immediate family member of the physician) has a financial relationship (and prohibits billing for services provided pursuant to a prohibited referral), unless an exception applies.

Penalties for Stark violations are non-payment for services resulting from a prohibited referral, civil penalties up to $15,000 for each such service, and exclusion from the Medicare and Medicaid programs. Civil penalties of up to $100,000 apply for schemes, such as cross-referral arrangements, intended to circumvent the rules.

Definitions:

1. “Immediate family member” means husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.

2. Other “entities as appropriate” includes those free-standing entities providing designated health services as defined in Stark, including, but not limited to, clinical laboratory services, physical or occupational therapy services, radiology and certain other imaging services, durable medical equipment and home health services.

3. “Physician” means a doctor of medicine, osteopathy, dental surgery, dental medicine, podiatric medicine, optometry, or a chiropractor.

\(^1\) For purposes of this policy, “Affiliates” is defined as any entity that is wholly owned or controlled by Providence Health & Services or Western HealthConnect (for example, Swedish Health Services, Swedish Edmonds, Kadlec Regional Medical Center, PacMed Clinics and Inland Northwest Health Services).
Policy
Financial relationships with referring Physicians or with their Immediate Family Members (hereafter referred to as “physicians”) will comply with applicable Stark laws or meet one of the stated exceptions. Entities accepting business from referring physicians must either have no financial relationships with the physicians, must have a Stark-compliant contract (as determined by the Department of Legal Affairs) or must stay within the Stark approved exceptions for non-monetary compensation, medical staff incidental benefits or other items listed, as described below.

Except for bona fide employment arrangements with physicians, all business courtesies offered to physicians must meet the guidelines stated below. Nothing in this policy permits the use of a business courtesy that is intended to induce or reward the referral of patients or that is intended to induce or reward the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid for by Medicare or Medicaid.

Providence facilities are not allowed to provide a non-employed Physician with cash or cash equivalents (including gift cards or gift certificates) as non-monetary compensation or a medical staff incidental benefit.

Policy Details

A. Stark Law Requirements. The Stark law and regulations prohibit a financial relationship between a healthcare entity and a referring Physician through the giving of gifts, business courtesies or discounts intended to induce or reward the referral of a patient. This could be for inpatient services, diagnostic procedures, medications, etc. Providence does not allow any payments, gifts, business courtesies or discounts unless:
   • Services are provided under a contract for service at terms meeting fair market value (see relevant Providence policy); or
   • One of the three exceptions noted below is met.

B. Exceptions
   1. Non-Monetary Compensation. Non-monetary compensation (see Section C.1. for examples) may be provided to a Physician in the form of items or services (not including cash or cash equivalents) up to an aggregate of $392 per calendar year (2015), adjusted for inflation on an annual basis, if all the following conditions are satisfied:
      a. The compensation is not determined in a manner that takes into account the volume or value of referrals or other business generated by the referring physician;
      b. The compensation is not solicited by or on behalf of the physician;
      c. The compensation arrangement does not violate the Federal anti-kickback statute, section 1128B(b) of the Social Security Act, or any Federal or State law or regulation governing billing or claims submission; and
      d. Any excess payment up to 50 percent of the limit is returned by the physician by the end of the calendar year in which the excess non-monetary compensation was received or within 180 consecutive calendar days following the date the excess non-monetary compensation was received by the physician, whichever is
earlier. If the excess payment was over 50 percent, the error may not be correct by the physician repaying it. Contact the Department of Legal Affairs for assistance in these circumstances.

2. **Medical Staff Incidental Benefits.** Certain items or services called medical staff incidental benefits (see Section C.2. for examples) can be provided to a member of its medical staff if all of the following conditions are met:

   a. The item or service is used on the entity’s campus (i.e., within the entity – including a hospital, a clinic, an Ambulatory Surgery Center, etc., or on the entity’s grounds, such as a parking lot);

   b. The item or service is provided to all members of the medical staff practicing in the same specialty (but not necessarily accepted by every member to whom it is offered) without regard to the volume or value of referrals or other business generated between the parties;

   c. The item or service is provided only during periods when the medical staff members are making rounds or are engaged in other services or activities that benefit the entity or its patients;

   d. The item or service is reasonably related to the provision of, or designed to facilitate directly or indirectly the delivery of, medical services at the entity;

   e. The item or service is of low value (less than $33 in 2015, adjusted annually for inflation) with respect to each occurrence of the benefit; and

   f. The item or service does not violate the Federal Anti-kickback provision in section 1128B(b) of the Act, or any Federal or State law or regulation governing billing or claims submission.

3. **Other.** The following items are also allowable:

   a. Medical staff members may be identified on an entity’s web site.

   b. Medical staff members may be mentioned in an entity’s advertising.

   c. Personal computing devices, pagers and two way radios that are exclusively used to access entity medical records, hospital records, or patients and personnel on the entity’s campus.

C. **Examples of Business Courtesies (non-comprehensive list)**

   1. The following are examples of business courtesies that must be included (and tracked) as compensation under the Stark Law non-monetary compensation exception:

      a. Business related meals not furnished in connection with an executed, bona fide personal services arrangement.
b. Sporting events or other similar events such as theater and concerts, including the cost of the tickets and a pro rata allocation of the cost of the meal, if applicable

c. Local recreational events, such as fishing, boating, hunting and golfing, including cart fees and meals, but excluding the value of the charitable contribution if the event is a charity event

d. Continuing Medical Education (CME) seminars held off-campus and CME seminars held on-campus if the value of the on-campus CME seminar is greater than $33 (2015) per invited Physician per occurrence. The value is defined as the price an individual would pay if purchasing a seminar from an outside source – not the Providence cost of providing such seminar

e. Flowers or other gifts provided Physicians when they are hospitalized or to recognize a special event, such as a birthday

f. Room allowances or other financial benefits provided to non-employed physician community board members at a community board retreat if the benefit is not offered to all community board members and if the compensation or benefit is not listed as compensation for the member’s services in his or her appointment letter

g. Prizes and awards given on special days, such as “Doctor’s Day”

h. Holiday gifts given to non-employed Physician members of the community board and Chiefs of Staff of the entity in recognition of the time and energy expended on behalf of the entity and communities they serve

i. Other than the one medical staff appreciation event allowed under Stark (see 2.i. below), parties where medical staff members and their spouses are invited.

2. Below are examples of business courtesies that meet the medical staff incidental benefits exception or that meet another Stark exception and do not need to be tracked.

   a. Free or discounted meals (such as meals served in the cafeteria or physician’s lounge when the physician is rounding), parking and computer/Internet access provided in the entity, so long as they are provided to all members of the medical staff without regard to the volume or value of referrals

   b. CME seminars held on hospital property provided the value of the CME seminar is less than $33 (2015) per invited physician per occurrence

   c. CME seminars held on hospital property for the benefit of the hospital’s patients (such as traditional on-site hospital grand rounds and other similar in-house education programs), regardless of value

   d. CME provided in the local service area where the primary purpose of the education is compliance training, regardless of value

   e. Community board retreats where the entity pays for travel, food and lodging for all its community board members and the benefit is included in the member’s appointment letter. In addition, the entity may pay for leisure activities of its physician community board members and the physician’s spouse provided the
benefit is provided to all community board members and the benefit is included in the member’s appointment letter.

f. Meals served at community board meetings, whether held on-campus or off-campus.

g. Meals provided to an existing member of the medical staff and their spouse where the purpose of the meal is to recruit a physician or other provider to the community and the meal is attended by a Providence representative, the existing medical staff member, the recruit and is pursuant to an executed agreement.

h. Business related meals where the purpose is to discuss the physician’s duties under a services agreement with the entity where (i) the agreement specifically contemplates such business meals; and (ii) the meal is modest as judged by local standards and occurs in a venue conducive to conducting a meeting.

i. One local medical staff appreciation event per calendar year for the entire medical staff, such as a holiday party, provided the entity has a formal medical staff. Any gifts or gratuities provided in connection with the medical staff appreciation event are subject to the non-monetary compensation amount and must be tracked.

D. Other Items. An entity Chief Executive Officer (CEO) or other administrative personnel, including senior management, are not barred from personally paying for social events such as a dinner in the CEO’s home or weekend golf for Physicians who are personal friends. The CEO or other administrative person may not submit the expenditure for reimbursement from Providence and may not claim the expenditure as a business expense on their personal tax return. Providence does not expect or encourage this activity as a way of avoiding the limitations otherwise set forth in this policy. The administrative and senior management team should avoid the appearance of impropriety in this type of personal entertainment. Providence anticipates that such events would be infrequent and reciprocal.

E. Non-Monetary Compensation Tracking Requirements

   1. Each Providence entity serving patients shall designate an individual or individuals who are responsible for tracking non-monetary compensation provided to Physicians.

      a. Approval to provide non-monetary compensation to a Physician shall be sought within an entity prior to any expenditure to assure that the total calendar year non-monetary compensation cap of $392 in 2015 is not exceeded.

      b. Tracking of non-monetary compensation should occur at the time the item or service is provided to the physician.

      c. This tracking shall ensure that all payments to a Physician are made in accordance with this and any other applicable Providence policies. At a minimum, the tracking should include: Physician or immediate family member name, physician NPI number, date non-monetary compensation item or service was provided, description of the item or service, cost or value of the item or service.
2. Business courtesies that fall within the medical staff incidental benefits definition do not need to be tracked.

F. **Enforcement.** Employees who fail to comply with this Policy will be subject to appropriate disciplinary action pursuant to applicable Providence policies.

G. **Document Retention.** The Providence entity shall retain all tracking documents, in accordance with Providence policy.

H. **Questions/Information.** Consult your region Integrity and Compliance Office, System Integrity or the Department of Legal Affairs for further information or to gain clarification on questions regarding any facet of the Stark Laws and this policy.

**References:**
Code of Conduct
42 U.S.C. 1320a-7b; 42 C.F.R. 1001.952(a)-(a)
42 U.S.C 1395nn; 42 C.F.R. §411.350-411.361 (Stark Regulations)
OIG Draft Supplemental Compliance Program Guidance for Hospitals, dated June 8, 2004