



# Policy

## CORPORATE COMPLIANCE PROGRAM PROHIBITION OF KICKBACKS AND INDUCEMENTS

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Administration
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### BACKGROUND

The Society receives payments for resident (and client) services from the government's Medicaid and Medicare programs. Thus, each facility and employee must comply with laws that have been enacted to ensure that the government receives good value for its payments. In addition to monitoring the Society's internal practices (such as our quality of care and billing practices), the government is concerned with the Society's external relationships—with suppliers, providers and referral sources who provide items or services reimbursable by Medicare, Medicaid or other government healthcare programs (referred to as a "supplier" or as "suppliers"). This is because certain types of arrangements (called "kickbacks" and "inducements") can result in the government being billed for more (or higher cost) goods or services than necessary. This policy provides guidance to Society employees as to the sorts of relationships with suppliers that must be avoided, as well as the types of arrangements that are permitted.

#### 1. ***Kickbacks: Society Relationships with Suppliers of Goods or Services.***

A "kickback" is best described by the expression, "I'll scratch your back if you'll scratch mine." The government prohibits such arrangements because of the possibility they will result in more (or higher cost) goods or services being billed to the government. This section describes examples of "kickback" relationships we must avoid – whether the "kickback" works to the benefit of the Society or to the individual making the purchasing decision. This section also provides guidance on arrangements that are permitted.

##### a. "Kickbacks" benefiting the Society.

##### 1) "Kickbacks" in the form of discounted goods or services.

Employees responsible for purchasing or substantially influencing the purchase of goods or services for the Society may not accept goods or services offered by suppliers at below market price if the Society also orders other products or services from that supplier, which have more favorable reimbursement, or if the Society otherwise refers business to that Supplier. For example, the Society cannot refer Medicare Part B medical supply purchases to a supplier in exchange for receiving Medicare Part A supplies from that supplier at below market price.

Most offers of discounts on goods or services are acceptable, so long as the discount applies to the item(s) or service(s) being purchased, is reflected as a discount on the invoice and is appropriately reported to government programs.

An employee who has questions concerning whether a discount is acceptable should consult the Purchasing Sub-system or corporate compliance officer at the National Campus.

2) “Kickbacks” in the form of travel.

Employees responsible for purchasing have substantial influence on the purchase of goods or services for the Society. These employees may not accept offers by suppliers of free or discounted travel related to the purchased item or service (such as an offer to receive training at a supplier’s headquarters). In the event travel is deemed necessary by an employee’s administrator or system head, it is Society policy to pay directly for the costs of the employee’s travel.

The Society will pay transportation costs for employees who serve as faculty speakers at supplier-sponsored symposia, however, supplier symposia sponsors may reimburse or pay reasonable related lodging expenses and a stipend, remitted to the Society, in an amount commensurate with wages and other Society resources incurred on behalf of the employee’s participation in the supplier-sponsored symposium.

3) Charitable donations or contributions to Society events.

a) Solicited Donations.

Society employees may not seek, or accept, cash donations from suppliers on behalf of the Society unless the donation is in the context of a community-wide drive to raise money for the Society. Donations must be to the facility or the Society as a whole (not to an individual employee), and must be recorded using the Society’s resource development policies and procedures. Even in the context of a community-wide drive, a cash donation that is so unusually large as to clearly suggest an attempt to influence a purchasing decision should not be accepted. Individual suppliers should never be exclusively targeted for charitable donations. The Society expects all purchase decisions to be made on the basis of value added without regard to charitable donations made to the Society.

Suppliers should never be solicited for cash or non-cash donations that will be directed to individual Society employees. Unsolicited non-cash contributions from suppliers for Society events such as holiday seasonal gifts (e.g., cookies, meat and cheese trays) are acceptable so long as they are of nominal value (\$20 per person) given the number of employees who share the gift and the gift’s estimated value is recorded and reported using the Society’s resource development policies and procedures. This policy (regarding cash donations and non-cash contributions) applies equally to suppliers who do not have a current business relationship with the Society but seek to have such a relationship.

b) Unsolicited Charitable Donations.

Unsolicited donations from suppliers to a particular Society facility or to the Society as a whole may be accepted provided such donation is not being used to disguise an otherwise prohibited kickback and provided that the donation is appropriately accounted for by the Society as a charitable donation.

c) Educational and Other Grants.

See the Society’s policy on **Requests for Educational Grants/Gifts from Suppliers** (II.K) for procedures to follow for grant-related activities.

b. “Kickbacks” involving resident/client medical records.

Employees may not grant suppliers (including, but not limited to, contract therapists, consulting pharmacists or physicians) access to resident/client records in exchange for the Society receiving something of value from that supplier (such as a discount on goods or services). (Note that only suppliers who are directly or indirectly involved in the care of a resident or client have a “need to know” about the resident’s or client’s healthcare status and thus may be allowed access to such records.) In addition to anti-kickback concerns, releases of resident/client records raise potential issues under the Privacy Standards of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as well as applicable state privacy and confidentiality laws. Society policies governing the release of resident and client records must always be followed.

c. “Kickbacks” benefiting an employee.

1) “Kickbacks” in the form of cash payments to employees.

Employees may not accept cash gifts from any supplier under any circumstance. Any offer of a cash gift should be politely refused and reported to the administrator or corporate compliance officer.

2) “Kickbacks” in the form of employee travel.

Employees responsible for purchasing or substantially influencing the purchase of goods or services for the Society may not accept offers by suppliers of free or discounted travel related to the purchased item or service (such as an offer to receive training at a supplier’s headquarters). In the event travel is deemed necessary by an employee’s administrator or department head, it is Society policy to pay directly for the costs of the employee’s travel.

3) “Kickbacks” in the form of other gifts, hospitality or entertainment to employees.

Employees may never accept gifts, hospitality or entertainment from Suppliers in exchange for purchasing or influencing the purchase of an item or service from a supplier. Employees may accept reasonable business meals from suppliers provided the meal is part of a legitimate business purpose. To that end, a legitimate business activity should be conducted during the meal. In addition, employees shall not accept lavish meals. Employees shall record and report to their supervisors business meals from suppliers, including the estimated value of the meal, the name of the supplier and the business purpose for the meal.

Non-cash gifts of nominal value (that is, less than \$20 per each gift and limited to \$100 in total from any one supplier in a calendar year) are permissible so long as the employee accepting such a gift reports it, in writing, to his/her supervisor for placement in the employee’s employment file. Any gifts whose value exceeds the above listed amounts are prohibited by this policy. An example of a gift prohibited by this policy would be where an employee receives an item of furniture for his/her own home — at no cost or reduced cost — from the supplier chosen (by that employee) to fulfill the facility’s furniture needs.

2. **Inducements: Society Relationships with Referral Sources.**

An “inducement” occurs when one organization or individual (for example, the Society) offers another organization (for example, a hospital) or individual (for example, a physician) that may refer residents, patients or clients to the Society (a “referral source” or “referral sources”) an incentive for the referral of potential residents, clients or patients. An incentive may take the form of a cash payment (commonly known as a bribe), non-cash gifts, providing services for the benefit of the referral source or making reciprocal referrals.

Paragraphs (a) and (b) below provide general guidance regarding inducements and relationships with referral sources. Next, paragraph (c) below, provides additional guidance for arrangements with certain providers specifically identified by the government as posing a higher level of risk.

a. **Inducement of referrals.**

1) “One-way” inducements.

An employee who works with referral sources may not offer anything of value to the referral source. The government would likely view such an arrangement as an “inducement” (or, an “incentive”) for the referral source to refer potential residents/clients to Society facilities (or home health agencies).

Accordingly, employees may not offer cash gifts to referral sources. Nor should Society staff routinely offer to substantially assist a hospital’s discharge planner in conducting his/her assigned duties.

Non-cash gifts of nominal value (less than \$20 per gift and less than \$100 in total to any one referral source in a calendar year) are permissible so long as the employee offering such a gift reports it to his/her supervisor. For example, it would be permissible under this policy to send flowers to a hospital’s discharge planner on his/her birthday provided that the cost of those flowers is considered under this policy to be nominal. For additional guidance regarding arrangements with discharge planners, see paragraph (c)(2), below.

2) Reciprocal referrals.

An employee who works with referral sources may not offer to send Society business to the referral source without first determining whether that organization or individual is the most cost-effective, high-quality supplier or provider of the item or service needed by the Society.

For example, a facility should not send its laboratory work to the office of a physician who refers residents/clients to the facility (or home health agency) unless there are other business reasons to use that physician’s laboratory services (for example, the physician’s office is the low-cost provider of that service in the community). Referrals between the Society and referral sources shall not be conditioned upon return referrals or any other inappropriate influences.

b. **Referrals to or from family members.**

An employee who works with referral sources with whom the employee or another Society employee has a family relationship must disclose the relationship to his/her administrator (or department head). The administrator or department head then will make a determination as to whether the employee’s work responsibilities could or should be modified or whether any other action should be taken to avoid or minimize this potential conflict.

c. Additional Guidance for Specific Arrangements.

In order to provide healthcare services to residents and in order to ensure that residents and others receive needed healthcare services, the Society must enter into a variety of arrangements with other healthcare providers. These providers may be potential referral sources to the Society. In the alternative, the Society may be a source of referrals to such providers. Although these arrangements are necessary and beneficial to residents, care must be taken such that arrangements with other providers are made at arms-length, with no improper inducements or remuneration flowing either from the Society to the provider, or visa versa.

Although the guidelines set forth above, cover arrangements between the Society and other providers, this section is intended to supplement those guidelines and to provide additional guidance regarding certain arrangements and relationships specifically identified by the government as being vulnerable to abuse. Any Society employee who receives any offer of cash, gifts, referrals or other items of value in violation of this policy shall report such offer to the Society's corporate compliance officer.

Residents are also considered to be referral sources. Accordingly, this section also provides specific guidance regarding financial arrangements between the Society and its residents.

1) Arrangements with Hospice.

The government has specifically targeted arrangements between long-term care facilities and providers of hospice as presenting a higher risk of abuse. The government's concerns center around the fact that a long-term care facility controls which hospice providers will be permitted to furnish care to the facility's residents, as well as the fact that arrangements with long-term care facilities can be lucrative to hospice providers because such facilities have large populations of potential hospice patients. Although the government recognizes the efficiencies and value to residents inherent in exclusive or semi-exclusive arrangements between long-term care facilities and hospice providers, the government will closely scrutinize such arrangements for potential illegal remuneration or inducements.

It is the Society's policy to prohibit any of its employees from receiving or requesting anything of value related to the selection of a hospice provider. Examples of prohibited conduct and arrangements, include, but are not limited to, the following:

- A hospice offering free goods or goods at below fair market value to induce a facility to refer residents to the hospice.
- A hospice paying "room and board" payments to a facility for a Medicaid resident in amounts in excess of what the facility would have received directly from Medicaid had the resident not been enrolled in hospice.
- A hospice paying amounts to a facility for "additional" services for a Medicaid resident that Medicaid considers to be included in its room and board payment to the hospice.
- A hospice paying above fair market value for "additional" non-core services, which Medicaid does not consider to be included in its room and board payment.
- A hospice referring its patients to a facility to induce the facility to refer its residents to the hospice.

- A hospice providing free (or below fair market value) care to facility residents for whom the facility is receiving Medicare payment under the Medicare skilled nursing facility benefit, with the expectation that after the resident exhausts the skilled nursing facility benefit, the resident will receive hospice services from that hospice provider.
- A hospice providing staff at its expense to a facility to perform duties that otherwise would be performed by facility personnel.

Although several of the above examples of prohibited conduct make specific reference to Medicare or Medicaid residents, it is the Society's policy that such prohibitions shall apply equally, as applicable, to the Society's private pay residents. The Society has made this policy determination based on the fact that such residents may be private pay for the Society, but may be Medicare beneficiaries for hospice services. Questions about specific arrangements should be directed to the Society's corporate compliance officer.

2) Arrangements with Hospitals.

Arrangements between hospitals and long-term care facilities will be subject to scrutiny by the government because of the potential referrals that may flow between these types of organizations. The Society's facilities frequently admit residents who have been referred by area hospitals. Moreover, the Society's facilities may find it necessary to transfer ill residents to area hospitals. Given the referrals that flow between the Society and hospitals, it is the Society's policy that all such referrals be the result of arms-length arrangements, with no improper payments, inducements or incentives. Examples of conduct prohibited by Society policy include, but are not limited to, the following:

- Agreements to refer residents to a hospital in return for the hospital's referral of its patients to a Society facility.
- The offer, request or acceptance of any cash payment in return for referrals.
- The offer, request or acceptance of any non-cash gift in return for referrals.
- The offer to substantially assist a hospital's discharge planner in conducting his/her assigned duties.
- The offer to provide hospitals with discharge planners or liaisons in order to induce referrals.
- An arrangement whereby a Society facility only agrees to accept a Medicare beneficiary if the hospital will pay the facility an amount in excess of what the facility would receive through the Medicare prospective payment system.

Society personnel who engage in discharge planning activities on hospital campuses should clearly identify themselves as acting on behalf of the Society. They should not wear hospital jackets or wear tags with the hospital's name on them.

Questions regarding a specific arrangement with a hospital should be directed to the Society's corporate compliance officer.

3) Home Care Arrangements.

The government has issued statements indicating that it believes home healthcare to be an industry particularly vulnerable to fraud and abuse. Given that the Society provides services throughout the continuum of care, including senior living, assisted living and home care, in addition to long-term care services, it is of particular importance that any arrangements involving home health are at arms-length, with no improper inducements or remuneration flowing to any involved party, including Medicare or Medicaid beneficiaries. (See also paragraph 4 below).

It is the Society's policy to prohibit any of its employees from receiving or requesting anything of value related to referrals of home care services. Examples of prohibited conduct and arrangements include, but are not limited to, the following:

- A home care agency providing free services or staff to facilities in return for home health referrals.
- A home care agency subcontracting with facilities, such as senior living facilities, for the provision of home care services in order to induce the facility to refer residents to the agency.
- A home care agency referring patients to a Society facility to induce the facility to make referrals to the home care agency.

It is the Society's policy that all residents who receive information about Society-owned home care agencies are informed of the Society's ownership and interest in the agency. Questions regarding arrangements with home care agencies should be directed to the Society's corporate compliance officer.

4) Arrangements with Physicians.

a) Medical Directors

Financial relationships between long-term care facilities and physicians have also been identified by the government as being vulnerable to inappropriate inducements related to referrals. The Society's most common type of arrangement with physicians is to contract with them to provide medical director services. However, the Society may have other types of financial relationships with physicians as well. As with other referral sources and potential referral sources, it is the Society's policy that no improper inducements or remuneration shall be involved in arrangements with physicians.

In addition to laws prohibiting kickbacks and improper inducements for referrals, there are federal laws that govern physicians' referrals of certain types of services, e.g., ancillary services, to entities with whom they have a financial relationship. To facilitate the Society's compliance with these complex laws, the Society has implemented use of a template Medical Director Agreement, the Model Agreement for Professional Services, Medical Director of a Nursing Facility (the "Model Agreement"), which should be used in conjunction with the Society's Legal Documents and Transactions Policy ("Contracting Policy") when entering into medical director agreements. In the event that the Model Agreement is not used to document an agreement for medical director services, then any such arrangement and related contracts must undergo the review process outlined in the Contracting Policy. The procedures set forth in the Contracting Policy must also be followed in the event that changes are made to the terms of the Model Agreement.

b) Other Services Provided by Physicians

The Society's facilities may find it necessary to enter into agreements with physicians or other healthcare providers, such as podiatrists, psychologists, and psychiatrists, to provide services to residents. In such cases, the Model Agreement should be used and should list all services to be provided. Any changes to the Model Agreement must undergo the review process outlined in the Contracting Policy. Any agreements or arrangements with physicians other than for professional services or medical director services should be reviewed by the Society's chief legal officer and corporate compliance officer prior to entering into such agreements or arrangements.

c) Establishing Fair Market Value Compensation

All agreements with physicians must provide for fair market value compensation in return for services by the physician that are actually rendered. The physician should provide an invoice, timesheet or other document that details the services provided, including without limitation, the date of service, a description of the service, and, if applicable, the hours spent providing the service. The center's administrator shall carefully review such documentation for accuracy.

Fair market value under an agreement with a physician must be documented. Such documentation may include reference to a benchmark recognized in the industry for the applicable geographic region.

It is prohibited under Society policy for any payments to physicians or any referral sources to increase, decrease or otherwise vary based on referral volume.

5) Joint Venture Arrangements.

The government has specifically targeted joint ventures between providers, like the Society, and suppliers or other providers as being of higher risk. The government broadly defines a "joint venture" to include not only circumstances where the participating parties create a new legal entity to provide services, but also to include contractual arrangements to cooperate in providing services. The government refers to these types of contractual arrangements as "contractual joint ventures" and has identified certain of these types of arrangements as suspect.

The government has indicated that it finds particularly suspect contractual joint ventures under which a healthcare provider expands into a related business, e.g., long-term care facility expanding into DME, in order to provide the new item or service to its existing patients, and does so by contracting with an existing supplier or provider, often a potential competitor, who then manages the entire operation of the "new" business.

It is the Society's policy to enter into joint ventures in compliance with all applicable laws and regulations. Given the complex legal issues implicated by joint ventures, it is the Society's policy that any proposed joint venture must be reviewed and approved by the National Campus.

6) Arrangements With or Regarding Residents.

Many of the residents in the Society's facilities have their healthcare services covered under either the Medicare or Medicaid programs and are considered Medicare or Medicaid beneficiaries. There are a number of laws, including, but not limited to, the prohibitions on inducements to beneficiaries enacted as part of HIPAA, that regulate financial arrangements the Society may have related to its residents, especially those that are Medicare and/or Medicaid beneficiaries. These laws, among other things, prohibit the Society from offering gifts or items of value to beneficiaries to induce them to purchase items or services from the Society or to otherwise influence their choice of providers.

Given that a resident is considered to be a type of referral source, the general guidelines in this policy are applicable to arrangements with or regarding residents. In addition, the following offers specific guidelines also applicable to residents. Questions regarding financial arrangements with or related to residents that are not specifically addressed in this policy should be directed to the Society's corporate compliance officer.

a) Waiver of Co-payments

The government generally finds waiver of co-payments to be highly suspect and vulnerable to abuse. The government is concerned that providers may waive or forgive these payment obligations, not because the patient cannot pay, but rather in order to induce the patient to use that provider's services or to purchase items furnished by that provider because they are "free" to the patient, rather than because they are necessary.

A waiver is defined to include either not charging the resident the co-payment amount, or not making an effort to collect the amount from the resident after he or she has been charged. It is the Society's policy to prohibit the routine waiver of co-payments. Any waivers of co-payment amounts must comply with at least the following requirements.

- (1) Facilities are prohibited from advertising that they waive co-payments.
- (2) Any copayment waivers made prior to providing services or items shall not be done on a routine basis. Waivers may only be made after conducting an individualized, good faith analysis of the resident's financial circumstances and determining that there is financial hardship sufficient to justify the waiver. The analysis of financial need must be done on a case-by-case basis and must be conducted in an objective, uniform manner applying a reasonable set of income guidelines, according to the *Private Charitable Allowance* policy and procedure located in the **ACCOUNTING MANUAL, VOL. II, Collection and Write-Off** (section VII).
- (3) There shall be no co-payment waivers applied after items or services have already been provided unless the facility has made reasonable efforts to collect the amounts owed. The collection efforts should be consistent with those collection activities in which a facility engages to collect other debt from residents.

b) *Prohibition on Payment Conditions*

Federal law prohibits the Society's facilities from charging a Medicaid resident amounts in excess of the payment rates established by the applicable state Medicaid plan. Accordingly:

- (1) It is a violation of the Society's policy to require a third party to guarantee payment to a facility as a condition of admission, expedited admission or continued stay for a resident in the facility.
- (2) It is a violation of the Society's policy to charge, solicit or accept payment for services covered by Medicaid beyond that amount required to be paid under Medicaid as a condition of admission, expedited admission or continued stay in the facility.

Nothing in the Society's policy prohibits the following:

- (1) The facility may require a third party with legal access to a resident's income or assets to sign a contract to provide the facility with payment from such income or assets provided the contract does not require the third party to incur personal liability.
- (2) A facility may charge a Medicaid resident for items and services which are not defined by the applicable state's Medicaid plan as "nursing facility services" if the resident has specifically requested them and if the facility provides notice of the availability and costs of such services to residents and does not condition admission or continued stay in the facility upon the resident's requesting such additional services.

**Questions about these guidelines should be directed to the Society's corporate compliance officer.**