

SUBJECT: BUSINESS COURTESIES TO PHYSICIANS AND THEIR IMMEDIATE FAMILY MEMBERS

IMPLEMENTED: 09/07

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- REFERENCE:** Stark II, Phase III, Effective December 4, 2007
- REFERENCE:** 42 U.S.C. 1320a-7b; 42 C.F.R. 1001.952(a)-(v)
- REFERENCE:** 42 U.S.C. 1395nn; 42 C.F.R. §411.350-411.361 (Stark Regulations)
- REFERENCE:** OIG Supplemental Compliance Program Guidance for Hospitals, dated January 31, 2005
- REFERENCE:** B01.0006 Professional Courtesy Discounts - Physicians
- REFERENCE:** AD1.0087 Tracking Remuneration To and From Referral Sources, and Tracking use of Hospital Resources by Referral Sources

SCOPE:

This policy applies to Tomball Hospital Authority d/b/a Tomball Regional Hospital ("Tomball, Hospital or TRH") and any other entity or organization in which Tomball or affiliate owns a direct or indirect equity interest of 50% or more.

PURPOSE: The purpose of this policy is to provide guidance to the Hospital outlining how compensation in the form of certain items and services is treated under the non-monetary compensation exception and the medical staff incidental benefits exception 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. The purpose of this policy is to also ensure compliance with the terms of the Corporate Integrity Agreement ("CIA") dated July 23, 2007, and the CIA Amendment dated May 5, 2009, between Tomball Hospital Authority d/b/a Tomball Regional Hospital (the "Hospital") and the Office of the Inspector General ("OIG") of the Department of Health and Human Services.

DEFINITIONS:

1. "Physician" means a duly licensed doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor.
2. "Immediate family member" or "member of physician's immediate family" 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.
3. "Cap" means the current dollar amount for the non-monetary compensation exception and the medical staff incidental benefits exception of the Federal Stark Law that is adjusted annually for inflation by CMS which can be found at http://www.cms.hhs.gov/PhysicianSelfReferral/10_CPI-U_Updates.asp#TopOfPage.
4. "Solicit" means to request or ask for a business courtesy. It does not include a situation in which a physician asks for something that is commonly known to be available (e.g. tickets to a sporting event on a particular night, when it is known the facility has season tickets generally available).

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POLICY:

Except for bona fide employment/professional services arrangements with Physicians, all business courtesies offered to Physicians and/or their immediate family members must meet the guidelines stated in this policy. Nothing in this policy permits the use of a business courtesy that is intended to induce or reward the referrals of patients or that is intended to induce or reward the purchasing, leasing, ordering, or arranging for any good, facility, service, or item, nor may a business courtesy be extended to a potential referral source who solicits it.

APPLICABLE STARK LAW:**1. Non-Monetary Compensation Exception:**

A "financial relationship" as defined under the Stark Law is not created through the provision of compensation from an entity to a physician or an immediate family member in the form of items or services (not including cash or cash equivalents) that does not exceed the Cap, if all the following conditions are satisfied:

- (a) The compensation is not determined in any manner that takes into account the volume or value or referrals or other business generated by the referring physician.
- (b) The compensation may not be solicited by the physician or the physician's practice (including employees and staff members).
- (c) The compensation arrangement does not violate the Federal Anti-Kickback statute, Section 1128B(b) of the Act, or any Federal or State law or regulation governing billing or claims submission.

2. Medical Staff Incidental Benefits Exception:

A "financial relationship" as defined under the Stark Law is not created through the provision of compensation in the form of items or services (not including cash or cash equivalents) from the Hospital to a member of its medical staff when the item or service is **used on the Hospital's campus**, if all of the following conditions are met:

- (a) The compensation 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;
- (b) Except with respect to identification of medical staff members on the Hospital's website or in approved Hospital advertising, the compensation is provided only during periods when the medical staff members are making rounds or are engaged in other services or activities that benefit the Hospital or its patients;
- (c) The compensation is provided by the Hospital and used by the medical staff members only on the Hospital's campus. Compensation, including, but not limited to, internet access, pagers, or two-way radios, used away from the

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- campus only to access Hospital medical records or information or to access patients or personnel who are on the Hospital campus, as well as identification of the medical staff on the Hospital website or in Hospital advertising, will meet the “on campus” requirements of this sub-section;
- (d) The compensation is reasonably related to the provision of, or designed to facilitate directly or indirectly the delivery of, medical services at the Hospital;
 - (e) The compensation is of low value (that is, less than the Cap) with respect to each occurrence of the benefit (for example, free cafeteria meals available to a physician while he or she is rounding in the Hospital must be of low value); and
 - (f) The compensation arrangement 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.

EXAMPLES OF BUSINESS COURTESIES:

1. Except as otherwise provided herein, examples of business courtesies that must be included as “compensation” under the Stark Law non-monetary compensation exception and **must** be tracked by the Hospital on an annual basis per physician include, but are not limited to, the following:
 - (a) business related meals not furnished in connection with an executed, bona fide personal services arrangement as discussed in Section 2(e) and 2(f) herein;
 - (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;
 - (c) local recreational events, such as fishing, boating, hunting and golfing, including cart fees and meals, even if the event is a charity event;
 - (d) CME seminars held off-campus and all CME seminars held on-campus if the value of the on-campus CME seminar is greater than the Cap per invited physician per occurrence;
 - (e) flowers or other gifts provided to physician or their immediate family members when they are hospitalized or to recognize a special event, such as a birthday;
 - (f) room allowances or other financial benefits provided to physician members at a governing board or Hospital retreat if the benefit is not offered to all Medical Staff 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” gifts; and
 - (h) holiday gifts given to Chief of Staff in recognition of the time and energy expended on behalf of the Hospital and community they serve.In no event may the Hospital provide a Physician with cash or cash

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equivalents, such as gift certificates, under any of the above situations.

2. Examples of business courtesies that meet the medical staff incidental benefits exception or that meet another Stark exception and thus do **not** need to be tracked include, but are not limited to, the following:
 - (a) free or discounted meals (such as served in the physician's lounge), parking and computer/internet access provided in the Hospital, as 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 campus provided the value of the CME seminar is less than the Cap per invited physician per occurrence, or compliance training held in the local service area regardless of cost;
 - (c) governing board or Hospital retreats where the Hospital pays for travel, food and lodging for all its governing board members and the benefit is included as compensation in the member's appointment letter. In addition, the Hospital may pay for leisure activities of its physician governing board members, if applicable and the physician's spouse provided the benefit is provided to all governing board members and the benefit is included as compensation in the member's agreement;
 - (d) meals served at governing board meetings, whether held on-campus or off-campus;
 - (e) 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 Hospital representative, the existing physician member and the recruit candidate and is pursuant to an executed agreement furnished by the Hospital's Legal Services Department;
 - (f) business related meals where the purpose is to discuss the physician's duties under a services agreement with the Hospital 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; and
 - (g) a holiday party for the Hospital's employees and their spouses where all the physicians on the Hospital's Medical Staff are invited; or
 - (h) a holiday party only for the Medical Staff and their spouses where all members of the medical staff are invited.
 - (i) A potential referral source who is also the spouse of a facility administrator may attend facility social events in his or her capacity as the administrator's spouse and such events do not count toward the Cap and do not need to be tracked.

OTHER ITEMS:

1. The offering of professional courtesy discounts to physician members and their immediate family members for any inpatient admission or outpatient procedure is

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outlined in TRH Policy B01.0006 Professional Courtesy Discounts.

2. The Hospital President/CEO or other administrative personnel, including senior management, are not barred from paying for social events such as meals or golf for physicians and physician's immediate family members who are personal friends. The President/CEO or other administrative person may not submit the expenditure for reimbursement from the Hospital and may not claim the expenditure as a business expense on their personal tax return. The Hospital does not expect or encourage this activity as a way of avoiding the limitations otherwise set forth in this policy, and the administrative team and senior management should avoid the appearance of impropriety in this type of personal entertainment. The Hospital anticipates that such events would be infrequent and reciprocal.
3. If the Hospital inadvertently provides nonmonetary compensation that exceeds the Cap for a particular physician, such compensation is deemed to be within the limit, i.e. no period of disallowance, if:
 - a. The value of the excess nonmonetary compensation is no more than 50% of the limit; and
 - b. The physician returns to the Hospital the excess nonmonetary compensation by the end of the calendar year in which the excess was received or within 180 days, whichever is earlier; and
 - c. The excess occurs only once every three years with respect to the same referring physician.

FACILITY IMPLEMENTATION:

Business courtesies that fall within the non-monetary compensation exception set forth above **must** be tracked by the Compliance and Ethics Department using the Non-Monetary Compensation Log ("Stark Log"), whereas business courtesies that fall within the medical staff incidental benefits or other exception need not be tracked.

ENFORCEMENT:

Failure to adhere to the terms of this policy will be referred to the Hospital's Compliance Officer or his designee, the Legal Services Department and/or administrative personnel and shall result in appropriate human resources action up to and including termination. Failure to adhere to the terms of this policy will also be a factor in determining individual performance evaluations.

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**ATTACHMENT "A"
FREQUENTLY ASKED QUESTIONS ("FAQ")**

1. **Question:** (i) Can the Hospital provide free or discounted benefits to the members of its medical staff if these items are provided on the Hospital's campus? (ii) Can the Hospital identify its Medical Staff members on its website? (iii) Can the Hospital provide pagers to its Medical Staff members that are not used on the Hospital's campus?

Answer: (i) Yes, the Hospital may provide free or discounted meals, refreshments, parking, and computer/internet access to members of its Medical Staff. These items would all be covered under the medical staff incidental benefits. Incidental benefits are defined as benefits that are: (a) provided by the Hospital to all members of the Medical Staff without regard to the volume or value of referrals or other business generated by the parties; (b) provided only during periods when the Medical Staff members are making rounds or are engaged in other services or activities that benefit the Hospital and its patients; (c) provided by the Hospital and used by the Medical Staff members only on the Hospital's campus; (d) reasonably related to the provision of, or designed to facilitate directly or indirectly the delivery of, medical services at the Hospital; and (e) of a nominal value (i.e. less than the Cap per item or occurrence).

Answer: (ii) Yes, the Hospital may list and identify its Medical Staff members and their practice contact information on its website. However, it may not provide advertising for the physicians on its website.

Answer: (iii) Yes, there is an exception to the "on campus" requirement of the medical staff incidental benefits exception for pagers and two-way radios. The Hospital may provide both pagers and two-way radios to be used away from the Hospital's campus to access only the Hospital's medical records/information or to access patients or personnel away from the Hospital.

2. **Question:** (i) Can the Hospital sponsor a golf tournament or a Christmas party for the members of its medical staff? (ii) Can the Hospital sponsor both a Christmas party and golf tournament in the same calendar year?

Answer: (i) Yes, the Hospital may sponsor one local medical staff appreciation event per year, such as a Christmas party or golf tournament without the amount being credited per physician on the non-monetary compensation log. (ii) Yes, if certain conditions are met. If the Hospital has already sponsored or is planning to sponsor a party or a golf tournament and decides to sponsor a second medical staff appreciation event in the same calendar year, any amount spent by the Hospital on the second event will be credited per physician on the non-monetary compensation log. However, in planning such an event, a thorough review of the non-monetary compensation log must be conducted by key individual from Business Development/Marketing, Compliance, Legal Services and/or Administration to

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ensure that no member of the Medical Staff who attends this event exceeds the Cap. An amount per physician in attendance must be tracked on the non-monetary compensation log directly after the event. If a physician is close to reaching the Cap prior to the event, he or she must be informed that he or she may participate in such event at this or her own cost instead of the Hospital's. Items such as food, drinks, nominal prizes, green fees and cart fees, etc. should be all considered "compensation" that must be tracked on the non-monetary compensation log.

3. **Question:** (i) Can the Hospital's Administration and senior management ask physicians and their spouses to attend sporting events (i.e. Astros games) or other similar events (i.e. theater and concerts)? (ii) Can a physician receive tickets to such events without a member of the Hospital's Administration or senior management attending the event? (iii) Can a physician pay the Hospital for a ticket or tickets to such event?

Answer: (i) Yes, subject to limitation. The Hospital will consider the face value of the ticket as constituting "remuneration" (or compensation) subject to the Cap under the non-monetary compensation exception. The face value of the ticket(s) must be tracked regardless if the purpose of the ticket is business or personal. The Compliance Department and/or the Legal Services Department must be contacted for clarification in determining the face value of a luxury-box or playoff ticket. If a meal is provided at the event, the cost of the meal based on the number of attendees must be counted towards the Cap. The physician or the physician's practice must not solicit tickets.

(ii) Yes, the fair market value of the ticket as outlined in Answer 3(i) will constitute "remuneration" (or compensation) under the non-monetary compensation exception and must be tracked on the non-monetary compensation log for the physician receiving the ticket(s).

(iii) Yes, a physician may purchase a ticket (or tickets) from the Hospital for the fair market value of the ticket(s). If the physician pays the Hospital for the fair market value of the ticket(s), it will not be counted towards the physician's Cap or tracked on the non-monetary compensation log.

4. **Question:** Can the Hospital sponsor a Continuing Medical Education ("CME") seminar when it is offered to all physicians on the Hospital's medical staff?

Answer: The Stark regulations suggest physicians financially benefit from the provision of an "on" or "off" campus CME seminar and consequently the CME seminar constitutes remuneration under Stark. However, if the CME seminar is held on-campus and provided all the requirements outlined in AD1.0081 relating to the medical staff incidental benefits exception are met, then the Hospital may sponsor the CME seminar, including compliance training. In order to meet the medical staff incidental benefits exception for an on-campus CME seminar, the value of the seminar cannot exceed the Cap per occurrence.

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If the CME seminar is held off-campus, then the medical staff incidental benefits exception does not apply because this exception only applies to items and services provided on-campus with limited exceptions. However, the non-monetary compensation exception may apply provided the aggregate value of the items or services provided to each physician does not exceed the Cap per year per physician. If the Hospital sponsors an off-site CME seminar, then the Hospital needs to: (i) determine a fair market value for a physician's attendance at the event, and (ii) count the value of the seminar per physician in attendance towards the Cap under the non-monetary compensation exception log.

Notwithstanding the location, if the seminar is for compliance training (e.g., establishing policies and procedures, training of staff, informal monitoring, reporting) or specific training regarding the requirements of federal health care programs (for example, billing, coding, reasonable and necessary services, documentation, unlawful referral arrangements), then the Hospital may sponsor the seminar and there is no remuneration attributed to the physician under the compliance training exception. The compliance training exception requires the training to be held in the local community or service area. Compliance training for which CME credit is offered may not constitute compliance training under the Stark regulations.

5. **Question:** Can the Hospital provide flowers or other gifts to physician members of its Medical Staff or their immediate family members when they are hospitalized or to recognize a special event, such as a birthday?

Answer: Yes. However, the cost of flowers or other gifts provided to physician members or their immediate family members in the above settings are subject to the Cap under the non-monetary compensation exception and must be tracked on the non-monetary compensation log.

6. **Question:** Over what period of time does the Hospital calculate the Cap under the non-monetary compensation exception?

Answer: The Cap is calculated on a calendar year basis.

7. **Question:** How are gifts given to members of the Medical Staff on Doctor's Day or other special events treated?

Answer: Gifts given on Doctor's Day or other special events are subject to the Cap under the non-monetary compensation exception. Therefore, these items must be tracked on the non-monetary compensation log per physician receiving the gift. It should be noted that cash and cash equivalents, such as gift certificates, are strictly prohibited.

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8. **Question:** Can the Hospital employ a physician's son/daughter on a short-term or long-term basis? Does it matter if the position is budgeted or non-budgeted?

Answer: Stark applies to a physician or a physician's immediate family member. Since a physician's son or daughter is an immediate family member, then any financial arrangements with a physician or an immediate family member is required to meet an exception under Stark. In this case, it appears the arrangement could meet the employment exception under Stark, provided the arrangement is for identifiable services and is commercially reasonable, the compensation is fair market value, and is not based (either directly or indirectly) on the volume or value of referrals by the physician. While it might be preferable for the position to be budgeted, this is not a legal requirement but obviously the position must be for legitimate and necessary services.

9. **Question:** Can the Hospital provide marketing services for physicians (i.e. creating art-work for physicians and their practices)?

Answer: No, the Hospital may not provide marketing services for physicians.

TOMBALL REGIONAL HOSPITAL

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COMPLIANCE: All Departments