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Sponsor:	Brian Kozik: SVP, COMPLIANCE & PRIVACY
Section:	GA-Corporate Compliance
Manuals:	Compliance

GA-004-405 Non-Monetary Compensation to Physicians and Immediate Family Members

I. Purpose

To provide guidance with respect to 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 Anti-kickback statute.

II. Definitions

Non-Monetary Compensation: means non-monetary compensation or benefits provided by Broward Health and includes gifts, meals, entertainment, social events (including receptions hosted by Broward Health) and similar items of value extended to others without charge. Non-monetary compensation does not include certain medical staff benefits.

Federal Health Care Programs: Any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government or a state government, including, but not limited to: Medicare, Medicaid, managed Medicare, managed Medicaid, TriCare/CHAMPUS, VA, SCHIP, and Federal Employees Health Benefit Plan.

Immediate Family Member: The following individuals: 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.

Physician: A duly licensed and authorized doctor of medicine or osteopathy, doctor of dental surgery or dental medicine, doctor of podiatric medicine, doctor of optometry, or chiropractor. The term Physician also includes a Group Practice, other organization representing a physician, or a physician's immediate family member (as defined at 42 C.F.R. § 411.351).

III. Policy

Except for bona fide employment arrangements with physicians, all non-monetary compensation offered to physicians and/or their immediate family members must meet the guidelines stated in this policy. Broward Health shall not permit the use of non-monetary compensation 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 paid for by Federal Health Care Programs.

IV. Procedure

A. **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 an aggregate of \$398 per calendar year, adjusted for inflation on an annual basis (see Attachment A), if all the following conditions are satisfied:

1. The compensation is not determined in any manner that takes into account the volume or value of referrals or other business generated by the referring physician;
2. The compensation may not be solicited by the physician or the physician’s practice (including employees and staff members); and
3. 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.

B. **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 a hospital to a member of its medical staff when the item or service is used on the hospital's campus, and all of the following conditions are met:

1. 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;
2. Except with respect to identification of medical staff on a hospital web site or in 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;
3. 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 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 a hospital web site or in hospital advertising, will meet the “on campus” requirements of this section;
4. The compensation is reasonably related to the provision of, or designed to facilitate directly or indirectly the delivery of, medical services at the hospital;
5. The compensation is of low value (that is, less than \$33, adjusted annually for inflation, see Attachment A) with respect to each occurrence of the benefit (for example, free cafeteria meals available to a physician while he or she is serving patients who are hospitalized must be of low value);
6. The compensation is not determined in any manner that takes into account the volume or value of referrals or other business generated between the parties; and
7. 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.

V. **Examples**

A. **Non-Monetary Compensation**

1. Except as otherwise provided herein, examples of non-monetary compensation under the Stark Law exception that must be tracked by the Broward Health entity 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 below under 2.c.;
 - 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, but excluding the value of the charitable contribution 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 \$33 per invited physician per occurrence;
 - e. Flowers or other gifts provided physicians or their immediate family members when they are hospitalized or to recognize a special event, such as a birthday;
 - f. Prizes and awards given on special days, such as "Doctor's Day;"
 - g. Holiday gifts given to Chiefs of Staff in recognition of the time and energy expended on behalf of the hospitals and communities they serve;
 - h. Holiday parties only for the medical staff and their spouses where all members of the medical staff are invited.

VI.

Cash or cash equivalents (e.g. gift cards or gift certificates) DO NOT qualify for protections under the non-monetary compensation exception and may NOT be provided pursuant to this policy.

A. **Medical Staff Incidental Benefits**

1. Examples of business courtesies that meet the medical staff incidental benefits exception, the nonmonetary compensation 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 meals served in the physician's lounge), parking and computer/internet access provided in the hospital, 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 campus provided the value of the CME seminar is less than \$25 per invited physician per occurrence, or compliance training held in the local service area where the primary purpose of the seminar is compliance training, regardless of cost.;
 - c. 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 the Broward Health representative, the existing physician member and the recruit and is pursuant to an executed agreement furnished by Legal Counsel; 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;

- d. 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 and the event is on or after December 4 of the calendar year. Any gifts or gratuities provided in connection with the medical staff appreciation event are subject to the nonmonetary compensation amount and must be tracked and logged; and
- e. Lab coats provided to physicians with the Broward Health logo.

VII. **Annual Limit**

1. The Annual limit will be based on calendar year (January 1 – December 31).
2. The Corporate Compliance Department will be responsible for communicating the annual non-monetary compensation limit to all Broward Health entities.

VIII. **Tracking**

1. Items provided that fall within the non-monetary compensation exception set forth above must be tracked using the Non-monetary Compensation Form available via <https://broward.ethicspointvp.com/custom/broward/bc> and located on the Broward Health Intranet, whereas items that fall within the medical staff incidental benefits or other exception need not be tracked.
2. The regional Chief Financial Officer/Facility Director of Finance is responsible for tracking for each entity and must provide detailed information of all non-monetary compensation including costs prior to the provision of such items or services to ensure the applicable limits will not be exceeded. If the applicable limit would be exceeded by the anticipated cost of an item or service, the Corporate Compliance department shall notify the responsible person immediately and the responsible person shall NOT provide such items or services to the physician.
3. The actual expenditure amount or fair market value of all items and services shall be reported to Corporate Compliance via the Non-monetary Compensation Form and copies of all receipts or other documentation of costs or expenses must be attached to each report electronically.
4. Physician business courtesies will be aggregated by individual provider for Broward Health, meaning each region or facility listed in Section VII.5 below.
5. The annual limit applies to each region/facility as indicated below:
 - Broward Health Medical Center/Seventh Avenue Family Health Center
 - Broward Health Coral Springs
 - Broward Health Imperial Point
 - Broward Health North
 - Broward Health Gold Coast Home Health and Hospice
 - Broward Health Weston
 - Broward Health Foundation
 - Children's Diagnostic and Treatment Center

IX. If staff from the Broward Health Corporate Office (i.e. President/CEO, SVP or VPs) participate in an event that meets the criteria for a non-monetary compensation with a physician or immediate family member,

then the cost of the non-monetary compensation shall be divided between the regions/facility in which the physician or immediate family is a member of the medical staff. See FAQs on Non-Monetary Compensation.

X. Excessive Amounts

In the event Broward Health has inadvertently provided business courtesies to a physicians in excess of the annual limit, such compensation is deemed within the limit if:

1. The value of the non-monetary compensation is no more than 50% of the annual limit; and
2. The physician returns to Broward Health the excess non-monetary compensation (or an amount equal to its value) by the earlier of:
 - a. The end of the calendar year in which the excess non-monetary compensation was received, or
 - b. Within 180 consecutive calendar days following the date that the excess non-monetary compensation was received.

XI. If provision of an item or service exceeds the non-monetary compensation limit, the Vice President, Chief Compliance/Privacy Officer shall notify the Regional Chief Executive Officer. The Regional Chief Executive Officer shall advise the physician that the cap has been exceeded and shall seek prompt reimbursement of the excess amount as calculated above. If payment is not received within (15) calendar days of such notice, the Vice President, Chief Compliance/Privacy Officer shall provide written notice to the affected physician within (15) days. Such notice shall be written with a copy to the President/Chief Executive Officer and General Counsel.

XII. Annual Audit

By or before January 31 of each year, the Corporate Compliance Department shall review all business courtesies and medical staff incidental benefits provided to physicians in the preceding calendar year. The Corporate Compliance Department shall perform an audit of appropriateness of a representative sample of such expenditures and collection efforts, if applicable.

XIII. Regulation/Standards

42 C.F.R. § 411.357(k); 42 C.F.R. § 411.357(m)

Administration and Interpretation

The administration and interpretation of this policy is the responsibility of the Vice President, Chief Compliance/Privacy Officer.

Attachments

[Update Amounts for Calender Years .docx](#)

Approval Signatures

Step Description	Approver	Date
Final Approver	Brian Kozik: SVP, COMPLIANCE & PRIVACY	06/2019
Final Approver	Brian Kozik: SVP, COMPLIANCE & PRIVACY	05/2019
	Jennifer Mosley: EXEC SECRETARY	07/2018