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Owner	Lindy Nesbitt: Assistant VP Compliance & Senior Counsel
Area	Corporate Compliance
Applicability	Erie County Medical Center
References	CORP-022

Physician Compensation Policy

I. Policy Purpose, Statement of Policy, and Policy Goals:

It is the policy of Erie County Medical Center Corporation (“ECMCC”) to pay physicians properly and have sufficient documentation of such payments to ensure that payments are accurate and comply with applicable federal and state laws, including the Stark Law (42 U.S.C. § 1395nn) and the Anti-kickback Statute (42 U.S.C. § 1320a-7b). This policy applies to any arrangement, transaction or contract (“Agreement”) between ECMCC and a physician or physician-owned entity. Agreements include but are not limited to: practice acquisition; joint ventures; executive positions; medical directorships; employment; compensation for clinical productivity or call coverage; employed or contracted physician groups; and retaining a physician for group speaking event or other purpose benefiting ECMCC. Each Agreement must be negotiated, documented and administered in compliance with federal and state laws and regulations.

Any Agreement between ECMCC and a physician or physician-owned entity must be documented in a written contract that is signed by all of the parties. The terms of the Agreement must be commercially reasonable and set in advance. Any charges, compensation or payments shall be consistent with fair market value and not be determined in a manner that takes into account directly or indirectly the volume or value of any referrals or other business generated between the parties.

II. Definitions

- **Medical Director** means a physician who provides administrative oversight or support for ECMCC relative to a particular department or function within ECMCC. Medical Directors

include Chiefs of Service.

- **Anti-kickback Statute (“AKS”)** is a federal criminal statute that prohibits anyone (not just a physician) from offering, paying, soliciting or receiving anything of value in an effort to (1) induce or reward the referral of Federal health care program business and (2) purchase, lease, or order of, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program. The types of remuneration include any kickback, bribe, or rebates, whether made directly or indirectly, overtly or covertly, in cash or in kind. With respect to violations of AKS, a person need not have actual knowledge of the statute or specific intent to commit a violation; knowing and willful intent must be proven. Violation of AKS may result in imposition of criminal penalties, civil monetary penalties, program exclusion, and liability under the False Claims Act (31 U.S.C. 3729–33).
- **Fair Market Value (“FMV”)** must reflect an arm’s length transaction, whereby the compensation has not been determined in any matter that takes into account the volume or value of anticipated or actual referrals. FMV is an explicit requirement of ten exceptions to the Stark Law and three AKS Safe Harbors.
- **Stark Law (“Stark”)** is a federal statute that prohibits a physician from referring Medicare patients for designated health services (“DHS”) to an entity with which the physician (or immediate family member) has a financial relationship, unless an exception applies. Stark further prohibits an entity that provides DHS form submitting claims to Medicare for those services resulting from a prohibited referral. It is a strict liability statute: the lack of intent to make a prohibited referral is not a defense. Commonly used exceptions include personal services arrangements, bona fide employment and leases of space or equipment, all which must provide compensation consistent with fair market value.
- **Designated Health Services (“DHS”)** means any of the following services: clinical laboratory services; physical therapy, occupational therapy, and outpatient speech-language pathology services; radiology and certain other imaging services; radiation therapy services and supplies; durable medical equipment and supplies; parenteral and enteral nutrients, equipment, and supplies; prosthetics, orthotics, and prosthetic devices and supplies; home health services; outpatient prescription drugs; and inpatient and outpatient hospital services.
- **Safe Harbor Regulations** describe various payment and business practices that, although they potentially implicate AKS, are not treated as offenses under the statute. These regulations have been authorized by Congress and promulgated by the Department of Health and Human Services (“HHS”) Office of Inspector General (“OIG”). Many of the exceptions are made to exclude certain arrangements or transfers from the definition of payment, thus shielding the parties from potential criminal liability under AKS. The safe harbors include investment interests, space rental, equipment rental, personal services or management contracts, payments made to bona fide employees and recruitment.

III. Policy

1. The purpose of this policy is to ensure compliance with all applicable federal and state laws and regulations, including Stark and AKS, and to promote sound business judgments in connection with agreements whereby ECMCC provides or receives management services, business office services, or physician contracted services in exchange for a fair market value fee for services to be provided.

2. Payments shall not be determined in a manner that takes into account the volume or value of any referrals or other business generated between ECMCC and physician or entity. Agreements will contain a "no requirement to refer" provision, and there must be no written or oral understanding that patient referrals are a part of the arrangement.
3. Anti-Kickback (AKS), Stark and Safe Harbor Regulations
 - a. AKS and Stark are broadly written to prohibit organizations and individuals from knowingly and willfully offering, paying, asking for, or receiving any money or other benefit, directly or indirectly from third parties in connection with items or services billed to federal programs. AKS, including the Safe Harbor Regulation, and Stark must be considered whenever something of value is given or received by ECMCC or its representatives or affiliates that are in any way connected to patient services. This is particularly true when the arrangement could result in over-utilization of services or a reduction in patient choice. Even if only one purpose of a payment scheme is to influence referrals, the payment may be unlawful.
 - b. There are many transactions that may violate AKS and Stark. For example, no one acting on behalf of ECMCC may offer gifts, loans, rebates, services, or payment of any kind to a physician who refers patients to that entity, or to a patient, without consulting his or her supervisor, as well as the ECMCC Office of General Counsel or the Compliance Officer. Such persons should review any discounts offered by suppliers and vendors, as well as discounts offered to third party payers. Patient deductibles and copayments must generally be collected and may not be waived without the prior authorization of the Office of General Counsel or the Compliance Officer. Rentals of space and equipment must be at fair market value, without regard to the volume or value of referrals that may be received in connection with the space or equipment. Fair market value may need to be determined through an independent appraisal.
 - c. Agreements for professional services, management services, and consulting services must be in writing, have at least a one-year term, and specify the compensation in advance. Payment based on a percentage of revenue should be avoided in many circumstances. Any questions about these arrangements should be directed to ECMCC Office of General Counsel or the Compliance Officer. Joint ventures with physicians or other health care providers, or investment in other health care entities, must be reviewed by the ECMCC Office of General Counsel.
 - d. The U.S. Department of Health and Human Services has described a number of payment practices that will not be subjected to criminal prosecution under AKS. These so-called "safe harbors" are intended to help providers protect against abusive payment practices while permitting legitimate ones. If an arrangement fits within a safe harbor it will not create a risk of criminal penalties and exclusion from the Medicare and Medicaid programs. The failure to satisfy every element of a safe harbor does not in itself make an arrangement illegal. Analysis of a payment practice under AKS and Safe Harbor Regulations is complex, and depends upon the specific facts and circumstances of each case. Employees within ECMCC should not make their own judgments on the availability of a safe harbor for a payment practice, investment, discount, or other arrangement. These situations must be reviewed by the ECMCC Office of General Counsel.

- e. Violation of AKS is a felony, punishable by a twenty-five thousand dollar (\$25,000) fine or imprisonment for up to five (5) years, or both. Under the False Claims Act, civil monetary penalties of up to fifty thousand dollars (\$50,000) per violation may be imposed. Stark violations also may implicate False Claims Act liability and civil monetary penalties. Physicians and facilities may be excluded from participating in the Medicare and Medicaid programs for up to five (5) years for violation of these laws.

IV. Procedure

1. All transactions involving management services, business office services, or contract services provided by ECMCC to a physician or medical practice in exchange for a fee must comply with all applicable federal and state laws, including, Stark and AKS.
2. Medical Directors/Chief of Service
 - a. The medical director seeking payment must provide an accurate and prompt timesheet for the services rendered in that month related to his/her medical director or chief of service duties.
 - b. The timesheet would typically include the date of the service, a description of the services rendered and, if appropriate, to whom and where the services were rendered. There should be an articulated expectation that all time should be recorded timely.
 - i. This is a requirement for hospital payments for medical directors and chiefs of service.
 - ii. If the timesheets are not submitted, inaccurate, and/or continuously late, ECMCC may withhold payment.
 - c. The Vice President overseeing the department of the medical director or his/her designee, will ensure that the required services are rendered and sign the medical directors timesheet prior to submission for payment.
 - d. The medical director's timesheet will be submitted via fax, email or mail to Administration at ECMCC.
 - e. Once received and logged, the payment will be approved for payment and sent to Accounts Payable.
 - f. The timesheets submitted will be maintained for seven (7) years.
 - g. A periodic review by the Compliance Department of the timesheets will be conducted to ensure compliance with the Agreement.
3. Any individual who becomes aware of any activity that may be a violation of AKS or Stark should report the potential violation to ECMCC Office of the General Counsel or Compliance Officer.
4. If the Compliance Officer becomes aware of any activity that may violate AKS or Stark, the Compliance Officer, in coordination with the appropriate departments, shall conduct an appropriate review or investigation of the activity.
5. If after an appropriate review and investigation of an activity, it is determined by the

Compliance Office or General Counsel that there is a reportable event, the appropriate authorities will be notified, in writing, within sixty (60) days after making the determination that the reportable event exists.

Reference:

42 USC § 1320a-7b(b); 42 C.F.R. § 1001.952(a)-(v); 42 U.S.C. § 1395nn(e)(3);

ECMCC Compliance Program

Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 6402(f)(2), 124 Stat 119 (2010).

Name change from Anti-Kick back

ECMCC has developed these policies and procedures in conjunction with administrative and clinical departments. These documents were designed to aid the qualified health care team in making clinical decisions about patient care. These policies and procedures should not be construed as dictating exclusive courses of treatment and/or procedures. No health care team member should view these documents and their bibliographic references as a final authority on patient care. Variations from these policies and procedures may be warranted in actual practice based upon individual patient characteristics and clinical judgment in unique care circumstances.

Approval Signatures		
Step Description	Approver	Date
	Brian Murray: Chief Medical Officer	12/2020
	Charlene Ludlow: ECMC Executive Sponsor	12/2020
	Joseph Giglia: Administration Human Resources Chief Officer	12/2020
Owner	Nadine Mund: Corporate Compliance Officer	12/2020

Applicability

Erie County Medical Center