

NORTHCARE NETWORK

POLICY TITLE: Anti-Kickback & Stark Law	CATEGORY: Compliance	
EFFECTIVE DATE: 3/21/13	BOARD APPROVAL DATE: 3/21/13	
REVIEWED DATE: 8/26/24	REVISION(S) TO POLICY STATEMENT: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	OTHER REVISION(S): <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
RESPONSIBLE PARTY: Compliance Officer	CEO APPROVAL DATE: 9/3/24 Megan Rooney, CEO	

APPLIES TO

NorthCare Network Personnel
Network Providers

POLICY

It is the policy of NorthCare Network to fully comply with the Federal Anti-Kickback Statute and the Physician Self-Referral Prohibition (Stark Law). NorthCare complies with the Federal Anti-Kickback Statute by prohibiting the solicitation or receiving anything of value to induce or reward referrals or generate Federal health care program business.

In addition, NorthCare complies with the Physician Self-Referral Prohibition (Stark Law) by prohibiting a physician from referring Medicare or Medicaid patients for designated health services to an entity with which the physician (or immediate family member) has a financial relationship, unless an exception applies. This law also prohibits the designated health services entity from submitting claims to Medicare for those services resulting from a prohibited referral. The basic Stark Law prohibition applies to entities with which a physician or the physician's immediate family member has a financial relationship.

PURPOSE

To ensure compliance with, and promote awareness of, requirements under the Anti-Kickback Statute and Physician Self-Referral Prohibition (Stark Law).

DEFINITIONS

The following definitions are provided as basic definitions under the Stark Law.

1. **Designated Health Services (DHS)** – Include: physical therapy, occupations therapy, and 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; home health services; prosthetics, orthotics, and prosthetic devices and supplies; outpatient prescription drugs; and inpatient and outpatient hospital services. [42 CFR 411.351]
2. **Entity** – means a physician's sole practice or a practice of multiple physicians or any other person, sole proprietorship, public or private agency or trust, corporation, partnership, limited liability company, foundation, nonprofit corporation, or unincorporated association that furnishes DHS (Designated Health Services).

3. **Financial Relationship** – Two types of financial arrangements are covered under the Stark Law (both direct and indirect): (1) arrangement involving physician ownership or investment interest in a DHS entity to which the physician refers; and (2) compensation arrangements between a referring physician and a DHS entity to which the physicians make referrals.
4. **Immediate Family Member** – Husband, wife, birth or adoptive child, parent, or sibling; stepparent, stepchild, stepbrother, or stepsister; farther-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. [42 CFR411.351]
5. **Kickback** - means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any Contractor, Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract, or in connection with a subcontract relating to a prime contract. [48 CFR 52.203-7]
6. **Physician** – For the purposes of the Stark Law, a “physician” is defined as “a 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.” Therefore, if a health care practitioner who is not a “physician” under this definition has a financial relationship with an entity, the Stark Law does not apply to the arrangement, or any referrals made by that practitioner. [42 CFR 411.351]
7. **Referral** – Means a request by a physician that includes the provision of any DHS, the establishment of a plan of care by a physician that includes DHS, the certifying or recertifying of the need for DHS, or the request for a consultation with another physician and any test or procedure ordered by or to be performed by that other physician. The definition specifically excludes DHS personally performed or provided by the referring physician. [42 CFR 411.351]

REFERENCES

- 42 CFR 411.350 Stark Law
- 42 USC 1395nn Stark Law Statute
- 42 USC §1320a-7b Anti-Kickback Statute
- 42 CFR § 1001.952 Safe Harbors
- MDHHS/PIHP Contract
- NorthCare Network Code of Conduct

HISTORY

REVISION DATE: N/A, 5/16/17, 3/13/18, 10/21/20, 8/23/21, 6/10/22,4/25/23

REVIEW DATE: 3/13/13, 12/18/13, 10/16/14, 11/5/14, 9/16/15, 7/3/16, 5/16/17,

3/13/18, 1/22/19, 12/3/19, 10/21/20, 8/23/21, 6/10/22, 4/25/23, 8/26/24

CEO APPROVAL DATE: 3/13/13, 12/18/13, 11/5/14, 10/6/15, 7/5/16, 6/6/17, 3/27/18, 2/7/19, 1/7/20, 11/3/20, 9/7/21, 7/12/22, 5/2/23, 9/3/24

BOARD APPROVAL DATE: 3/21/13

PROCEDURES

A. The Anti-Kickback Law

1. The Anti-Kickback Statute covers a broader range of activity than the Stark Law and extends to all health care providers and plans that utilize any amount of federal funds.
2. The law states that anyone who knowingly and willfully receives or pays anything of value to influence the referral of federal health care program business, including Medicare and Medicaid, can be held accountable for a felony. It makes it illegal to offer directly or indirectly to pay any “remuneration” to any individual/organization (including vendors, customers, and potential customers) to induce that person/organization to recommend, prescribe or purchase NorthCare services when those services are being paid for by the Federal government. NorthCare Network personnel cannot refer patients to other health care professionals in exchange for money, reduced rent, use of equipment, referrals to you, health services for a family member, marketing, weekly meals, etc. or anything of value regardless of the value.

Remuneration can be anything of value such as discounts, rebates, grants, vouchers, cash, gifts, services, coupons, lottery tickets, trips, or free products. The government may view remuneration as a kickback.

3. In addition, the Anti-Kickback Statute makes it illegal for NorthCare Network customers and vendors to accept any improper remuneration in exchange for prescribing or influencing prescribing NorthCare Network services. Thus, there is a common interest between NorthCare Network and those individuals and entities with whom we do business to avoid an arrangement that might appear to be a “kickback.”
4. This law provides for criminal penalties for whoever knowingly and willfully offers, pays, solicits, or receives remuneration to induce or reward the referral of business reimbursable under any of the Federal health care programs, including Medicare and Medicaid-
5. Safe Harbors: The Office of Inspector General (OIG) has published regulations outlining certain categories of activities referred to as “safe harbors” that are deemed not to violate the Anti-Kickback Statute. The failure of a particular business arrangement to comply with a safe harbor, however, does not make the conduct or activity illegal. NorthCare Network recognizes the complexity associated with safe harbors; therefore, NorthCare Network may seek legal counsel in addressing suspected violations of these laws and this policy.
6. Compliance with this policy is a required condition of employment or continued engagement with NorthCare Network. Violations of this policy should be reported in accordance with NorthCare Network Policy – *Responsibilities for Reporting Non-Compliance Policy*.

B. The Stark Self-Referral Law

1. The Stark Law applies to referrals from physicians under the Medicare and Medicaid programs.
2. The Stark self-referral law prohibits a physician who has a financial relationship with an entity that provides or performs designated health services:
 - a. from making a referral for any designated health care service that is reimbursable by Medicare or Medicaid, and
 - b. the entity that provides or performs the services may not bill Medicare or Medicaid for the services provided because of the prohibited referral.
3. A financial relationship can include an ownership or investment interest or a compensation arrangement. Any relationship involving the transfer of payments or benefits, including income guarantees, certain types of loans, free or discounted services, equipment, or office space, constitutes a compensation arrangement.
4. This law provides for civil monetary penalties and program exclusion for knowing violations.
5. Exceptions – NorthCare Network recognizes the complexity in the Stark Law and the numerous associated exceptions; therefore, NorthCare Network may seek legal counsel in addressing suspected violations of these laws and this policy.

Updates effective January 2021 creates new permanent Stark exceptions and clarifies existing exception requirements.

C. Private Benefit/Private Increment

1. NorthCare Network may not engage in activities primarily serving private interests and may not enter into agreements in which the savings of NorthCare Network pass to "Insiders" such as physicians. NorthCare Network may not pay physicians unreasonable or excessive compensation, whether the compensation is for goods or services.

D. Physician Recruitment

1. All agreements involving physician recruitment incentives should be reviewed by legal counsel. This includes agreements that include income guarantees, discounted office space, subsidized services, or discounted equipment. The recruitment incentives should be structured to minimize risks of violating the Stark self-referral law and the anti-kickback law.
2. All physician recruitment incentives are approved by the NorthCare Network CEO. The basis of the decision should be documented. All physician recruitment incentives should be reviewed to ensure compliance with IRS guidelines on physician recruitment by tax-exempt corporations.

E. Hospital-Based Physicians

1. Employment arrangements or independent contractor arrangements between NorthCare Network and hospital-based physicians should be structured to comply with an exception to the Stark self-referral law where the ordering of designated health services is included. Any payments related to transactions between NorthCare Network and hospital-based physicians should be consistent with fair market value and should not be based on the volume or value of any referrals. Arrangements with hospital-based physicians should be structured to comply with the anti-kickback law.
2. To comply with the laws governing tax-exempt charitable organizations, NorthCare Network must ensure that arrangements with hospital-based physicians do not result in private benefit or private inurement.