

2018 NON-MONETARY COMPENSATION TO PHYSICIANS (AND CHANCE TO REVIEW 2017)

Under the federal Stark Law, hospitals may provide non-monetary compensation to physicians up to an aggregate amount of \$407 for calendar year 2018. The dollar limit for "medical staff incidental benefits" (e.g., meals, parking and other items or incidental services that are used on the hospital's campus) is less than \$34 per occurrence. Other requirements of the Stark Law's exception for non-monetary compensation and medical staff incidental benefits also need to be met. Hospitals should take inventory of such non-monetary compensation and benefits to confirm they are meeting the law's requirements.

DETAILED ANALYSIS

The Stark Law provides that if a hospital has a financial relationship with a physician, the physician may not refer to the hospital for the provision of "designated health services" (including inpatient and outpatient hospital services), and the hospital may not bill for such services unless an exception is met. A "financial relationship" under the Stark Law is construed very broadly, which means all remuneration from a hospital to a physician must be considered, including in-kind compensation.

Pursuant to the Stark Law regulations at 42 C.F.R. § 411.357, there are exceptions for non-monetary compensation. Generally, the non-monetary compensation exception may be used to protect items or services provided to a physician such as entertainment, meals and other non-cash equivalent benefits. Specific detail about the exception is outlined below. Hospitals should review and ensure they are meeting these exceptions.

Non-Monetary Compensation up to \$407

Compensation from an entity in the form of items or services (not including cash or cash equivalents such as gift cards) that does not exceed an aggregate of \$407 per year, if all of the following conditions are satisfied:

- 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.
- The compensation may not be solicited by the physician or the physician's practice (including employees and staff members).
- The compensation arrangement does not violate the Anti-Kickback Statute or any federal or state law or regulation governing billing or claims submission.

Where an entity has inadvertently provided non-monetary compensation to a physician in excess of the \$407 limit, such compensation is deemed to be within the \$407 limit if the value of the excess non-monetary compensation is no more than 50 percent of the \$407 limit and the physician returns to the entity the excess non-monetary compensation (or an amount equal to the value of the excess non-monetary compensation). The return must be made by the end of the calendar year in which the excess non-monetary compensation was received or within 180 consecutive calendar days following the date the excess non-monetary compensation was received by the physician, whichever is earlier. This "return" option may be used by an entity only once every three years with respect to the same referring physician.

Medical Staff Incidental Benefits

Compensation in the form of items or services (not including cash or cash equivalents) from a hospital to a member of the medical staff when the item or service is used on the hospital's campus, if all of the following conditions are met:

1. The compensation is offered 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 website 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 campus only to access hospital records or information or to access patients or personnel who are on the hospital campus, as well as the identification of the medical staff on a hospital website or in hospital advertising, meets this "on campus" requirement.
4. The compensation is reasonably related to the provision of, or designed to facilitate directly or indirectly the delivery of, medical services to the hospital.
5. The compensation is of low value (that is, less than \$34) with respect to each occurrence of the benefit (e.g., each meal given 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.
7. The compensation arrangement does not violate the Anti-Kickback Statute or any federal or state law or regulation governing billing or claims submission.
8. Other facilities and health care clinics (including, but not limited to, federally qualified health centers) that have bona fide medical staffs may provide compensation under this exception on the same terms and conditions applied to hospitals.

PRACTICAL TAKEAWAYS

Hospitals should update 2018 non-monetary compensation tracking tools to reflect the new non-monetary compensation limit of \$407 and medical staff incidental benefits limit of \$34 per occurrence. Further, hospitals should review non-monetary compensation provided in 2017 to ensure that such compensation did not exceed the 2017 limit of \$398 and take any necessary corrective action to repay excess amounts within the earlier of 180 days of the overpayment of by December 31, 2017.

If you have any questions or would like any additional information about this topic, please contact:

- **Gregg M. Wallander** at gwally@hallrender.com or 317-977-1431;
- **Erin M. Drummy** at edrummy@hallrender.com or 317-977-1470;
- **Alyssa C. James** at ajames@hallrender.com or 317-429-3640;
- **Laura B. Sahm** at lsahm@hallrender.com or 317-977-1486; or
- Your regular Hall Render attorney.