

PATHWAYS CMH

POLICY TITLE: Anti-Kickback and Stark Law	CATEGORY: Compliance	
EFFECTIVE DATE: 06/06/13	BOARD APPROVAL DATE: 06/05/13	
REVIEWED DATE: 04/07/17	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 Manager	CEO APPROVAL: Mary Swift, CEO	

APPLIES TO:

Pathways Personnel
Contract Providers

POLICY:

Pathways complies with the Anti-Kickback Statute by prohibiting specific categories of referral payments, including kickbacks, bribes, or rebates. Any knowing and willful conduct involving the solicitation, receipt, offer, or payment of any kind of remuneration in return for referring an individual or recommending or arranging the purchase, lease, or ordering of an item or service that may be wholly or partially paid for under a federal health program is prohibited.

In addition, Pathways complies with the Physician Self-Referral Prohibition (Stark Law) by prohibiting a physician who has a financial relationship with an entity from making a referral to that entity for the provision of designated health services (DHS). 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 Laws).

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.
2. *Entity* – A person or legal entity that furnishes DHS.
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.
5. *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.
6. *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.

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
- CMHSP Specialty Supports and Services Contract Sections I.15 and II.5
- NorthCare Anti-Kickback and Stark Law Policy / Procedures

HISTORY:

REVISION DATE: N/A; 06/14/14; 04/08/15

REVIEW DATE: 04/07/17

CEO APPROVAL DATE: 05/13/13; 07/22/14; 04/08/15; 04/07/17

BOARD APPROVAL DATE: 06/05/13

PROCEDURES :

A. The Anti-Kickback Law

1. Pathways personnel are strictly prohibited from accepting gifts, favors, payments, services, or anything else of value, which might appear to influence the actions of Pathways. Pathways personnel may retain gifts of nominal value, such as pens, coffee mugs, and other similar novelties, but must refuse any gift of more than nominal value and should report any inappropriate offers to the Compliance Manager.
2. Pathways personnel are strictly prohibited from soliciting or accepting anything of value in exchange for individual referrals or in exchange for purchasing or leasing any item or service, which may be reimbursed, by Medicare, Medicaid, or any Federal or State health care program.
3. 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.
4. Compliance with this policy is a required condition of employment or continued engagement with Pathways. Violations of this policy should be reported in accordance with Pathways Policy - *Compliance Review and Investigation Policy and Procedure*.

B. The Stark Self-Referral Law

1. 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 as a result of the prohibited referral.
2. 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.

C. Private Benefit/Private Increment

Pathways may not engage in activities primarily serving private interests and may not enter into agreements in which the savings of Pathways pass to "insiders" such as physicians. Pathways 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 so as to minimize risks of violating the Stark self-referral law and the anti-kickback law.
2. All physician recruitment incentives are approved by the Pathways 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 Pathways 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 Pathways 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 so as to comply with the Anti-Kickback Law.
2. In order to comply with the laws governing tax-exempt charitable organizations, Pathways must ensure that arrangements with hospital-based physicians do not result in private benefit or private inurement.

F. Safe Harbors and Exceptions

1. Pathways recognizes the complexity in the Anti-Kickback and Stark Laws and the associated safe harbors (Anti-Kickback) and numerous exceptions to the Stark Law; therefore, Pathways may seek legal counsel in addressing suspected violations of these laws and this policy.