###### **Procedure Name:** Anti-Kick Back

**Purpose**

To ensure The Agency’s compliance with federal and state anti-kickback statutes.

# Detailed Procedure(s)

The federal anti-kickback statue prohibits any person from knowingly and willfully soliciting, receiving, offering or paying anything of value to another person in return for the referral of a patient, or in return for the purchasing, leasing, ordering, or arranging for any item or service, reimbursed by a federal health care program such as Medicare or Medicaid, (42 U.S.C. § 1320a-7b). Penalties for violating the statue include imprisonment, criminal fines, exclusion from government health care programs and civil monetary penalties. A similar NY law prohibits the exchange of remuneration for referrals for items or services covered by the state’s Medicaid program. (NY Social Services Law § 366-d).

Prohibition on Exchange of Remuneration (payment for services/goods) for Client Referrals

Employees are prohibited from offering or paying anything of value, whether in cash or in kind, to another party in return for the referral of a client to The Agency. Likewise, employees are prohibited from soliciting or receiving anything of value, whether cash or in kind, from another party in return for the referral of a client by The Agency to another health care provider.

To ensure that no payment, in cash or in kind, to or from another party is construed as an illegal kickback, except as permitted by this protocol, employees are prohibited from:

* Offering or paying anything of value to a party that is a referral source for The Agency
* Soliciting or receiving anything of value from a party that receives referrals from The Agency.

This prohibition applies even if the remuneration is not expressly conditioned on or otherwise linked to client referrals. Examples of conduct that violate this protocol includes, but is not limited to the following:

* An employee accepts free meals or tickets to a cultural event from a hospital to which The Agency refers clients for medical care.
* A physician who’s practice group receives client referrals from The Agency for less than fair market value.
* The Agency leases space to a medical clinic that receives client referrals from The Agency at a rent greater than fair market value.
* The Agency receives free equipment or services from a clinical laboratory from which The Agency orders laboratory test.

Employees shall refer clients for medical care to other providers based on the medical needs of the client and in accordance with The Agency’s clinical practice protocols.

**Acceptance of Gifts from Vendors:**

The acceptance of gifts from current or prospective vendors of The Agency may constitute an improper kickback understand and federal law. Accordingly, employees may not solicit or receive any such gifts except as permitted by The Agency’s Contractor Selection Protocol.

**Structuring Business Arrangements to Comply with Safe Harbors:**

Certain common business arrangements between parties exchanging referrals may be structured to fit within “safe harbors” to the anti-kickback statute. Complying with a safe harbor ensures that no portion of the compensation flowering under the arrangement may be characterized as an improper inducement for referrals.

Although compliance with a safe harbor is not legally required, The Agency seeks to fit business arrangements with client referral sources and recipients into a safe harbor whenever feasible. In particular, The Agency generally requires that any lease with a source or recipient of client referrals satisfy the “space rental safe harbor”. This safe harbor requires, among other things, that the aggregate rent paid by or to the other party is fixed in advance for a period of at least one year and is consistent with fair market value. All leases to which The Agency is a party must be reviewed by the agency’s legal counsel to ensure compliance with this requirement.

The Agency takes a similar approached to any ancillary service agreements with sources and recipients of client referrals, such as equipment leasing, technology licensing and administrative service arrangements. These arrangements are generally required to fit within the anti-kickback “equipment leasing” or “personal services” safe harbor.

The Agency may enter into a lease or service agreement with a source or recipient of client referrals that does not satisfy a safe harbor only with the approval of the Compliance Officer. Oral agreements with sources of recipients of client referrals for space or services, including oral supplements to or amendments of existing written agreements are strictly prohibited.

Whenever feasible, The Agency will seek to verify the fair market value of space, equipment or services through a third party expert or date source. This process may include a review of comparable real estate listings in the community, the purchase of proprietary databases or the retention of an independent valuation expert.

When negotiating arrangements with vendors, any concessions from the vendor must generally be reflected as a price discount our rebate. Other payments made by vendors to The Agency are prohibited unless expressly approved by the agency’s Legal Counsel.

**Handling Questions and Concerns:**

The anti-kickback statute is complex and The Agency expects that, from time to time, employees may have questions as to whether a particular activity or arrangement is consistent with this protocol. Employees are encouraged to ask their supervisors for guidance in this area. In addition, employees may directly contact the agency’s Compliance Officer/Designee for assistance in interpreting this protocol.

Non-retaliation/Intimidation: No individual who files a report under this policy in good faith may be subject to retaliation/intimidation in any form. Retaliation is also prohibited against an employee for refusing to carry out any activity that is the subject of a report made under this policy in good faith. No employee may threaten to retaliate against another employee for filing a report.

Prohibited retaliation includes, but is not limited to, terminating, suspending, demoting, failing to consider for promotion, harassing or reducing the compensation of an employee due to the employee’s intended or actual filing of a report under this policy. Retaliation is prohibited even if it is determined that the allegedly improper conduct was proper or did not occur, provided that the report was made in good faith. The Agency reserves the right to take disciplinary action against any employee who maliciously files a report he or she knows to be untrue.

Any actual or threatened retaliation should be reported by the affected employee or any other employee to the Compliance Officer. The Compliance Officer will investigate such allegations in the same manner as other investigations carried out under this policy.

 The agency’s Corporate Compliance Officer: Tracy Crisafulli

 716.375.4747 ext 533

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**Enforcement:**

Employees who do not comply with this protocol will be subject to disciplinary action by The Agency. Depending on the facts and circumstances of each case, an in accordance with any applicable collective bargaining agreements, The Agency may reprimand, suspend or terminate any employee who fails to comply with this protocol.

**Definitions**

**Fraud** - any type of intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him/herself, or to The Agency or another person.

**Abuse** - practices that are inconsistent with sound fiscal, business or medical practices and result in an unnecessary cost to the state or federal government or The Agency, or in reimbursement of services that are not medically necessary or fail to meet professionally recognized standards for health care.