

Innovative Health Alliance of New York

Policy No. 08

EFFECTIVE DATE: 9/21/15

POLICY TITLE:

Prohibited Referrals and Arrangements

REVIEW BY: 9/21/17

POLICY

Innovative Health Alliance of New York (IHANY), its ACO Participants, and ACO Providers/Suppliers will comply with all laws pertaining to fraud, waste and abuse in federal and state health care programs, including Medicare and Medicaid. This includes compliance with the Physician Self-Referral Law ("Stark Law") and the Anti-Kickback Statute. IHANY, ACO Participants, and ACO Providers/Suppliers will not engage in referrals prohibited by law or restrict referrals in a manner that is otherwise prohibited by law.

Federal and state laws make it unlawful to pay or give anything of value to any individual or entity in a manner that takes into account the value or volume of patient referrals or other business for which payment may be made in whole or in part under Medicare, Medicaid, or other federal or state health care program. As such, IHANY and ACO Participants and ACO Providers/Suppliers will not solicit, receive, offer, or pay anything of value in exchange for referring patients, products, or services for which payment may be made under a federal or state healthcare program.

In addition, the distribution or use of any shared savings under IHANY programs will not be based, either directly or indirectly, on referrals between IHANY, ACO Participants, and ACO Providers/Suppliers.

PROCEDURE

1. IHANY legal counsel will review and approve all arrangements between IHANY, ACO Participants, ACO Providers/Suppliers, and other potential referral sources for compliance with laws and regulations before the execution of such arrangements. This requirement includes the use of or reliance on any fraud and abuse waivers under the MSSP ACO program.
2. All distributions of shared savings or other incentive-based payments connected with the MSSP or any other performance-based plan will be made in accordance with methodologies approved by the IHANY Board of Directors. Distributions of shared savings under the MSSP will be reasonably related to the purpose of the MSSP as determined by the IHANY Board of Directors. No distributions will be based on the value or volume of referrals between the IHANY, its ACO Participants, ACO Providers/Suppliers, or other potential referral sources, except as permitted by law..

3. IHANY, ACO Participants, ACO Providers/Suppliers, and other individuals or entities performing functions or services related to IHANY activities will not condition their participation in IHANY on referrals of federal health care program business that is or would be provided to Medicare beneficiaries who are not assigned to IHANY.
4. IHANY, ACO Participants, ACO Providers/Suppliers and other individuals or entities performing functions or services related to IHANY activities will not require that Medicare beneficiaries be referred only within the IHANY and its network of ACO Participants or ACO Providers/Suppliers, except that this prohibition does not apply to referrals made by employees or contractors who are acting within the scope of their employment or contractual arrangement provided that the employees and contractors remain free to make referrals without restriction or limitation when:
 - i. a beneficiary expresses a preference for a different provider or supplier;
 - ii. a beneficiary's insurer determines the provider or supplier; and
 - iii. the referral is not in the beneficiary's best medical interests.

DEFINITIONS

Accountable Care Organization ("ACO") means a legal entity that is recognized and authorized under applicable State, Federal, or Tribal law, is identified by a Taxpayer Identification Number (TIN), and is formed by one or more ACO participants.

ACO Participant(s) means an individual or group of ACO provider(s)/supplier(s) that is identified by a Medicare-enrolled Tax Identification Number (TIN), that alone or together with one or more other ACO participants comprise(s) and ACO, and that is included on the required list of ACO participants.

ACO Provider/Supplier(s) means an individual or entity that is a provider or a supplier, which is enrolled in Medicare, that bills for items or services it furnishes to Medicare fee-for-service beneficiaries under a Medicare billing number assigned to the TIN of an ACO participant, and that is included on the required list of ACO providers/suppliers.

Federal Anti-Kickback Statute ("AKS") prohibits offering, soliciting, paying or receiving anything of value if even one purpose is intended to induce or reward referrals for any item or service for which payment may be made under a federal health care program (e.g. Medicare and Medicaid). Violation of the AKS can result in criminal and civil penalties, including prison and exclusion from participation in federal health care programs. The AKS includes many "safe harbors". If the payment or arrangement fits within a safe harbor, the arrangement may be permitted even if it appears inconsistent with the AKS prohibition.

Physician Self-Referral Law ("Stark Law") prohibits a physician from making referrals for certain designated health services ("DHS") payable by Medicare to an entity with which he or she (or an

immediate family member) has a financial relationship (ownership, investment, or compensation), unless an exception applies.

POLICY CONTACT

For questions regarding this policy, please contact IHANY's Compliance Officer at (518) 243-4404.

RELATED PROCEDURES AND OTHER MATERIALS

- 42 U.S. Code § 1395nn. *Physician Self-Referral Law (Stark Law)*
- 42 U.S. Code § 1320a-7b(b). *Federal Anti-Kickback Statute*
- 42 C.F.R § 425.304(c). *Other program requirements. Prohibition on certain required referrals and cost shifting*

APPROVALS

Initial Approval: Board of Directors 9/21/15

Subsequent Review/Revision(s):
4/16/2018 - review