

OPERATING POLICY & PROCEDURE  
Good Samaritan Hospital

TITLE: Anti-Kickback Statute Policy

NUMBER: 07-00-07

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**PURPOSE:**

The purpose of this policy is to assure that Good Samaritan Hospital complies with the federal anti-kickback statute, which prohibits offering, paying, soliciting, or receiving any remuneration, directly or indirectly, overtly or covertly, in cash or in kind, to induce referrals of, or recommending or arranging for the purchase of any items or services covered under a federal health care program. 42 U.S.C. Sections 320a-7b(b) ("Anti-Kickback Statute"). Violation of the Anti-Kickback Statute is a felony punishable by a fine of up to \$25,000 and imprisonment for up to five years. Civil money penalties may also be imposed.

**DEFINITIONS:**

"Payment" means any form or type of remuneration or anything of value, which can be or is offered, paid, solicited or received directly or indirectly, overtly or covertly, in cash or in kind.

"Referral" means any referral to, recommendation of, or arrangement for the ordering, purchasing or leasing of any item or service payable in whole or in part by any federal health care program, including Medicare or Medicaid.

"Referral Source" means any Physician, health care facility, contractor, vendor, or agent that is in a position to make Referrals to, or receive Referrals from, Good Samaritan Hospital.

"Referring Physician" means a Physician who makes a referral or who directs another person or entity to make a referral or who controls referrals made by another person or entity.

"Physician" means 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.

"Immediate Family Member" means spouse; natural or adoptive parent, child or sibling; stepparent, stepchild, or stepsibling; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and the spouse of a grandparent or grandchild.

**POLICY:**

Good Samaritan Hospital does not offer, pay, solicit or receive Payment from anyone - employees, Physicians, health professionals, health care facilities or suppliers, vendors, patients, or others - to induce or in exchange for Referrals. When Good Samaritan Hospital employees are in a position to make Referrals to Physicians, health professionals or other healthcare facilities, they must make such Referrals solely based on the best interests of the patient, and

without regard to Referrals any such Physician, health professional or other healthcare facility has made (or might in the future make) to Good Samaritan Hospital. Payments by or to Good Samaritan Hospital to or from Referral Sources shall not be made in exchange for Referrals.

In addition to complying with the requirements set forth in this policy, any financial relationship (i.e., any relationship involving any type of Payment) between Good Samaritan Hospital and any Physician (or a Physician's Immediate Family Member) must also comply with any other specific policies applicable to such relationship, including without limitation, the Stark Policy (number 07-00-06), the Physician Transaction Review and Monitoring Policy (number 04-00-04), and the Contract Compliance Assurance Policy (number 07-00-08) [and the Physician Charitable Donation Policy].

#### PROCEDURE:

##### 1. Contracts for Items or Services

All items and services provided by or to, and all Payments to or from Good Samaritan Hospital pursuant to arrangements with Referral Sources must be pursuant to a written contract, signed by the parties, which has been approved through the corporate contract approval process. Such contract must provide for Payments consistent with fair market value, and must be for necessary items or services actually provided (and, in the case of contracts for physician services, properly documented in accordance with the Contract Physician Time Reports policy (number 04-00-18)). Such Payments must be set in advance and must not take Referrals into account, and may not be conditioned (explicitly or by implication or de facto) on either party making Referrals to the other party. Good Samaritan Hospital will not provide to or accept from a Referral Source any free items or services unless pursuant to Section 7 of this Policy and Procedure addressing business courtesies and gifts.

Any such contracts must specify with particularity the items or services covered. If there are multiple contracts with any one party, each one should incorporate the others by reference or each must refer to a master list of contracts that contains all contracts between the parties. Generally, contracts with Referral Sources should be for a term of at least one year. If that is not feasible, then at least the compensation terms must not be changed more often than annually.

Contracts with Physicians (or a Physician's immediate Family Member) must comply with any other specific policies applicable to such relationship, including without limitation, the Physician Transaction Review and Monitoring Policy (number 04-00-04) and the Stark Policy (number 07-00-06). Contracts with non-Physician Referral Sources must not be entered into unless Good Samaritan Hospital has (1) received a fair market value appraisal from a reputable, independent third party appraiser supporting the compensation under the arrangement, (2) obtained other reliable, independent data demonstrating that the compensation is consistent with fair market value, or (3) received prior approval from legal counsel.

## 2. Leases

Space or equipment leases between Good Samaritan Hospital and Referral Sources must be set out in a written lease, signed by the parties, which has been approved through the corporate contract approval process. Such leases must provide for rent consistent with fair market rent, and must be for necessary space or equipment actually provided. The aggregate rent must be set in advance and must not take Referrals into account, and may not be conditioned (explicitly or by implication) on either party making Referrals to the other party. Good Samaritan Hospital will not provide to or accept from a Referral Source any free use of space or equipment.

Any such leases must specify with particularity the space or equipment covered. Generally, leases with Referral Sources should be for a term of at least one year. If that is not feasible, then at least the rent terms must not be changed more often than annually. All leases should be for a maximum of five years or provide for a FMV adjustment of rent at least every five years.

Leases with Physicians (or a Physician's Immediate Family Member) must comply with any other specific policies applicable to such relationship, including without limitation, the Physician Transaction Review and Monitoring Policy (number 04-00-04) and the Stark Policy (number 07-00-06). Leases with non-Physician Referral Sources must not be entered into unless Good Samaritan Hospital has (1) received a fair market rent appraisal from a reputable, independent third party appraiser supporting the rent under the arrangement, (2) obtained other reliable, independent data demonstrating that the rent is consistent with fair market rent, or (3) received prior approval from legal counsel.

## 3. Physician Employees

Good Samaritan Hospital will pay Physician employees fair market value compensation for their services without taking Referrals into account. Compensation for Physician employees is not required to be set in advance nor set forth in a written contract signed by the parties (although it is preferable to do so), and Physicians may be eligible to receive bonuses in accordance with the Bonus Process for Employed Physicians Policy (number 04-00-09) (which requires that the contract with the Physician be in writing); however, such compensation, including any bonus, must remain consistent with fair market value without taking Referrals into account, in compliance with applicable legal guidelines as specifically approved on a case-by-case basis by legal counsel.

## 4. Loans and Guarantees

Good Samaritan Hospital will not lend to or borrow from, or guarantee any loan to or from, any Referral Source, except (1) in the context of a Physician recruitment arrangement conducted in accordance with Appendix A to the Physician Transaction Review and Monitoring Policy, titled Independent Determination Requirements for Physician Recruitment (Number 04-00-04a), or (2) with prior legal and board approvals.

## 5. Joint Ventures; Acquisitions

Good Samaritan Hospital will not form or invest or participate in a joint venture with any Referral Source unless (1) the joint venture transaction has been approved through the corporate contract approval process and by legal counsel and complies with any other specific policies applicable to such transaction, including without limitation, the Physician Transaction Review and Monitoring Policy (number 04-00-04), the Stark Policy (number 07-00-06) and the CHI Governance Matrix, (2) the financial terms of the transaction have been determined to be consistent with fair market value by a reputable, independent third party appraiser (or legal counsel has determined in advance that such an appraisal is not necessary), (3) the return on an investment in the joint venture is based on and proportional to each investor's ownership interest, and not on Referrals to the joint venture or to the other parties by any investor, and (4) there is no requirement that investors refer to or be in a position to refer or influence Referrals to the joint venture or to the other parties.

Good Samaritan Hospital will not purchase or sell a business or line of business to any Referral Source unless (1) the acquisition or sale transaction has been approved through the corporate contract approval process and by legal counsel and complies with any other specific policies applicable to such transaction, including without limitation, the Physician Transaction Review and Monitoring Policy (number 04-00-04) and the CHI Governance Matrix, (2) the financial terms are set at the time the transaction is entered into and have been determined to be consistent with fair market value by a reputable, independent third party appraiser (or legal counsel has determined in advance that such an appraisal is not necessary), and (3) there is no requirement that the seller be in a position to refer or influence Referrals to the buyer after the transaction.

## 6. Discounts

Good Samaritan Hospital will not accept a discount when purchasing items or services from any Referral Source, including without limitation, purchasing from vendors or suppliers, or through Group Purchasing Organizations, unless the discount: (1) complies with the discount safe harbor set forth in 42 CFR section 1001.952(h), or (2) has been approved in advance by legal counsel.

In addition, when making purchases pursuant to purchase orders based on vendor price lists, Good Samaritan Hospital shall assure that the documentation from the vendor discloses the full and accurate price of the products bought, taking into account any cash and non-cash price concessions or other non-price terms of the sale, on the invoice, receipt, or other documentation evidencing the purchase (collectively, "invoices"), or, with regard to volume rebates only, such information shall be disclosed through Good Samaritan Hospital's cost reporting process. Good Samaritan Hospital shall ensure that the invoices, or, in the case of volume rebates, the cost reporting process, accurately reflect the prices paid, taking into account any cash and non-cash price concessions or other non-price terms of the purchase.

## 7. Business Courtesies and Gifts

Any gift to a Physician (or a Physician's Immediate Family Member) must be approved by Good Samaritan Hospital legal counsel and comply with any other specific policies applicable to such arrangements, including without limitation, the Good Samaritan Hospital Stark Policy (number 07-00-06).

Any gift or business courtesy arrangement with a Referral Source must comply with the Good Samaritan Hospital Policy Governing Requesting or Accepting Gifts from Business Sources (number 03-03-38).

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**EFFECTIVE DATE: 10/22/03**

**NEXT REVIEW DATE: 7/31/06 [Annually]**

**AUTHORIZED BY: GSH Board of Directors**

**REVIEWED BY: CHI Legal**

**SOURCE: Leigh Bertholf, Vice President, Corporate Responsibility**

**DATE REVIEWED:**

**REVISION DATE: August 24, 2005**