

## Las Vegas TGA Part A Program Policy Statement

### Anti-Kickback Policies

#### Policy Statement

All Ryan White Part A funded service providers must, to ensure compliance with the federally required Anti-Kick Back Statute, must adhere/demonstrate compliance to the following policies:

1. Demonstrated structured and ongoing efforts to avoid fraud, waste and abuse (mismanagement) in any federally funded program
2. Prohibition of employees ( as individuals or entities) from soliciting or receiving remuneration for inducing referrals of items or services covered by Medicare, Medicaid, or any other federally funded program
3. Prohibition of employees (as individuals or entities), from soliciting or receiving payment in kind or cash for the purchase, lease, ordering, or recommending the purchase, lease, or ordering, of any goods, facility services, or items.
4. Requirement that entities providing Medicaid/Medicare billable services have a Compliance Plan/employee standard of conduct that distinguishes and describes conduct that merits agency penalties from conduct that represent a possible felony
5. Requirement that any Compliance Plan and/or employee standard of conduct describe conduct that merits exemption from anti-kickback regulations (safe-harbors)

#### Procedure

To ensure compliance with the Anti-Kick back Statute, all providers must develop, implement and adhere to the following procedures:

- Employee Code of Ethics including:
  - Conflict of interest
  - Prohibition on use of agency property, information or position without approval or to advance personal interest
  - Fair dealing – engaged in fair and open competition
  - Confidentiality
  - Protection and use of company assets
  - Compliance with laws, rules, and regulations
  - Timely and truthful disclosure or significant accounting deficiencies
  - Timely and truthful disclosure of non-compliance
- For Medicare/Medicaid providers, a Corporate Compliance Plan ( required by HCFA) that provides for:
  - Compliance officer
  - Compliance committee
  - Formal training programs
  - Effective lines of communication to report suspected non-compliance
  - Auditing (breaks in internal controls)

- Corrective action plans
- Instance and format to report non-compliance to Medicare and Medicaid anti-kickback regulation
- Nonprofit agency Bylaws or Board policies that include standards of conduct for members, including:
  - Conflict of interest
  - No use of agency assets for personal use
- Procedures for open door communication
- Contracts that discourage agency payments for service referral
- Provider recruitment practices that prohibit exorbitant signing bonuses
- Audit findings on internal controls
- Procurement policies with conflict of interest clauses
- Prohibition of higher charges for Medicare/Medicaid services
- Key employee background checks
- Any other documentation required by the Compliance Plan or employee conduct standards
- Compliance Plan and/or employee standard of conduct and/or not for profit agency bylaws that detail types of conduct that merit agency penalties versus types of conduct that are possible felonies that require:
  - Timely and truthful disclosure of non compliance to federal agency
  - If convicted, a fine of not more than \$25,000 or imprisoned for not more than five years, or both

Information is found in the compliance plan/employee standards of conduct that describes practices that are exempt from prosecution; included are:

- Some investments in ambulatory surgical centers
- Agencies in under-served areas that:
  - Enter into Joint Ventures
  - Have practitioner recruitment plans
  - Sell physician practices to hospitals
  - Give subsidies for obstetrical malpractice insurance
  - Have specialty referral arrangements between providers
  - Cooperative agreements with 501 (e) hospitals