

SAMPLE POLICY:

Compliance with The Eliminating Kickbacks in Recovery Act

Provider is subject to the Eliminating Kickbacks in Recovery Act (“EKRA”), a federal law which prohibits the solicitation or payment of remuneration in exchange for referring a patient to a recovery home, clinical treatment facility or laboratory.

Applicability. EKRA applies to all patients, regardless of their insurer, including patients who pay in cash, with private insurance, or who are covered by state or federal government health care programs. The services covered by EKRA are limited to recovery homes, clinical treatment facilities and laboratory services; however, all laboratory services are subject to EKRA.

Prohibited Conduct. Provider prohibits its employees, contractors, officers, volunteers or agents from directly or indirectly:

(A) soliciting or receiving any remuneration (including any kickback, bribe or rebate), in return for referring a patient to a recovery home, clinical treatment facility or laboratory; or

(B) paying or offering any remuneration (including any kickback, bribe, or rebate) to (i) induce a referral to a recovery home, clinical treatment facility or laboratory or (ii) in exchange for an individual using the services of that recovery home, clinical treatment facility or laboratory.

Individuals and entities who engage in prohibited conduct may be subject to up to 10 years in prison and up to \$200,000 in fines for each occurrence.

Exceptions. The following arrangements do not violate EKRA:

- Discounts or other reductions in price, if disclosed and reflected in the costs claimed or charges made;
- Payments made by an employer to an employee or independent contractor as long as those payments are unrelated to referrals, tests or procedures performed, or amounts billed or received;
- Discounts by drug manufacturers provided under the Medicare coverage gap discount program;
- Payments that meet the personal services and management contracts safe harbor under the federal Anti-Kickback Statute;
- Waivers or discounts of coinsurance/copayments if the waiver is not routinely provided and is provided in good faith;

- Certain remuneration between health care entities and an individual related to the availability and quality of services provided to medically underserved populations; and
- Remuneration made pursuant to alternative payment models.

Prior Review of Arrangements Implicating EKRA. Employees should be mindful that anything of benefit paid in exchange for referring or receiving services subject to EKRA, including laboratory services, may implicate EKRA and should be reviewed for compliance prior to commencing the arrangement. This includes, but is not limited to:

- Compensation arrangements with marketing or sales personnel which are based on commissions or a percentage of revenue formula and include revenue for laboratory services;
- Compensation and other payment arrangements which vary based on the volume or value of referrals or business generated for laboratory services;
- Any discount or special arrangement with a third party for the provision or referral of laboratory services; or
- Any routine waiver of patient cost-sharing for laboratory services or offering patients incentives for receiving laboratory services.

Prior to engaging in activities or entering into contracts which may implicate EKRA the activity and/or agreement should be reviewed by _____ to assess compliance with EKRA and whether an exception applies. If a compensation arrangement implicates EKRA and varies based on revenue, referrals, or amount of services performed, prior to approving the arrangement additional precautions will be implemented to ensure that services are performed in a lawful and appropriate manner and do not involve misleading or deceitful business practices.

Compliance Concerns. Any employee, contractor, volunteer, patient or other individual who has a concern regarding non-compliance with EKRA should report the issue to _____ or using the Provider's anonymous reporting process available at _____.

Training. EKRA is included in general compliance training provided by the Provider as well as certain individuals receive additional more detailed training on EKRA based on their job duties, including individuals who oversee contracting and other business arrangements relating to laboratory services, recovery homes or clinical treatment facilities and marketing and sales personnel.