

Topic: Anti-kickback and Inducement of people we support; contractual and financial arrangements with physicians and referral sources	Department: All departments
Original effective date: 3/11/02	Last revision date: 7/29/25
Owner: VP for Quality and Compliance	Frequency of reviews: Annual
Internal/Regulatory Reference(s) (all that apply): 42 USC 1320a-7b; Social Security Act section 1128a; 42 USC 1320a-7a; 42 CFR 1003.1000(a) & (b); 42 USC 1395nn; HHS OIG Civil Monetary Penalties Final Rule	
Related documents/Links: NA	

Policy: It is the policy of The Arc of Monroe (“The Arc”) that business, administrative and support functions promote personal and organizational outcomes, and sound fiscal practices.

Additional Information: This policy applies to all persons who are affected by the agency’s risk areas (to the degree that they are so affected) including our employees, the CEO and other senior management, managers, contractors, agents, subcontractors, independent contractors, students, interns, volunteers, and (if applicable) the Board of Directors or members of Board committees; hereafter referred to as “affected parties.”

The Federal “Anti-Kickback” Statute makes it a crime, punishable by monetary fines and/or imprisonment, to knowingly and willfully offer, pay, solicit or receive a payment of any kind (i.e., cash, services, gifts, entertainment, favors, etc.) to anyone to induce referrals or in return for referrals of Medicare or Medicaid individuals. These laws have been construed very broadly, and cover many “ordinary” business activities that are common practice in the non-health care arena. Examples of practices that could be covered by the “Anti-Kickback” Statute include: (i) routinely waiving deductibles or co-payments; (ii) offering or furnishing referral sources with free items or services; (iii) offering goods or services at below market value for the purpose of inducing referrals; and (iv) offering individuals free items or services. Arrangements that satisfy all of the requirements of the regulatory “safe harbors” or are exceptions to the rules are immune from sanctions.

The Federal “Anti-Self-Referral” or Stark Law prohibits self-referral with respect to certain physician services. This statute prohibits, with certain statutory exceptions, physicians or certain other licensed professionals from ordering “designated” services from entities in which the physician or a member of the physician’s immediate family has a direct or indirect financial relationship.

Any proposed contract with a practitioner, facility, provider or vendor must be reviewed to assure compliance with these laws.

Procedure	
Task:	Responsible party:
Anti-kickback/Stark – General Guidelines:	
1. Affected parties cannot ask for or receive any type of benefit, gift or compensation because they: <ul style="list-style-type: none"> *Refer someone to one of our programs; *Try to get someone to come to one of our programs; *Arrange for someone to join our programs; and/or *Buy, lease, or order something that Medicaid pays for (either things or services) – or arranging for this to happen 	Affected parties

2. It is also illegal for staff to pay someone else for these same purposes, whether through money, a favor or some item or gift. Examples would include: *An affected party receives free concert tickets if they get people to come to one of our programs *An affected party pays another agency's referral agent to refer people with relatively few support needs to us	Affected parties
3. If affected parties believe this is happening, they need to report it to a manager immediately. Management needs to take immediate steps to prevent it from continuing to happen and ensure that Executive Management and the VP for Quality and Compliance are informed.	Affected parties; Manager
4. A review will occur to determine whether or not it's truly happening. If so, we will call our lawyers for direction and counsel. If appropriate, law enforcement will be notified.	VP for Quality and Compliance or designee
5. We will open a formal compliance case to ensure adequate documentation and oversight of the issue.	VP for Quality and Compliance
6. In response, managers may need to revise or update their systems to prevent this from happening again.	Management
7. Discipline will be decided by the manager in consultation with HR, the compliance officer, executive management (EMT – CEO, COO, CFO, CHRO), and legal counsel.	HR
8. Any contract or employment arrangement with a physician or other licensed practitioner must be reviewed by a member EMT before execution. Counsel will be consulted as appropriate.	EMT
9. Nothing in the contract or arrangement can be related to or contingent on the number of referrals we receive from the physician or other licensed practitioner.	EMT
10. Compensation must be consistent with local fair market value.	EMT
Inducement:	
1. If people we support get Medicaid or Medicare, staff are not permitted to give them money, gifts or any other material incentives to get them to join a Medicare- or Medicaid-funded program or service.	Affected parties
2. Similarly, affected parties cannot offer to waive a payment or reduce costs for people we support without express permission from agency administration and/or the VP for Quality and Compliance. This could also be considered an inducement to get them to attend our programs/ services which is against federal law.	Affected parties
3. The Arc will only waive or reduce costs if it's determined, after thorough review, that the person truly cannot pay. This would be an exception and should only occur after review and approval from the VP for Quality and Compliance or designee.	VP for Quality and Compliance; Executive Management Team
4. The Arc will never offer gifts or money or waive or reduce fees for the sole purpose of trying to get someone to choose The Arc as a service provider.	Affected parties
5. Affected parties are prohibited from giving any gift, hospitality or entertainment (such as t-shirts, water bottles, pens, etc.) to people we	Affected parties; Director; Sr. Director

support with a retail value of more than \$15 individually or \$75 in the aggregate per person on an annual basis.	
6. An affected party shall not offer any beneficiary cash or cash equivalents. The federal Office of the Inspector General (OIG) has defined cash as, “monetary payments in the form of current including funds transferred electronically, such as through a peer-to-peer application (e.g., Venmo, CashApp, PayPal, Zelle). Cash equivalents include prepaid cards such as Visa or Mastercard gift cards.	Affected parties; Director; Sr. Director
7. The OIG has determined that some gift cards are “in kind,” such as gift cards that can be redeemed only for certain categories of services or items. Examples of gift cards that would meet this “in kind” standard include gas cards, gift cards to fitness centers, or a gift card to a big-box store that can be used for limited and specific items (e.g., fresh food). The retail value limits identified in step 5 would apply here.	Affected parties; Director; Sr. Director
8. Any gifts including gift cards given by affected parties to people supported require the approval of an agency director or senior director. This is to ensure that there is no perception of favoritism or that this policy may be unintentionally violated.	Affected parties; Director; Sr. Director
Manager Responsibility:	
1. Managers have a responsibility to act as role models and establish the tone and expectations within their programs and teams for compliance with laws, rules and regulations.	Manager
2. Managers are obligated to understand their roles and responsibilities related to inducement and anti-kickback. They have an obligation to ensure their and their teams’ compliance with his policy and that possible situations like this are reported immediately.	Manager
VP for Quality and Compliance:	
1. The VP for Quality and Compliance acts as the agency’s Compliance Officer, as required in NYS law.	VP for Quality and Compliance
2. Has primary responsibility for administering the agency’s compliance program, and related policies and procedures.	VP for Quality and Compliance
3. Acts as a resource for agency staff, management, leadership and the Board for issues related to corporate , including inducement and anti-kickback.	VP for Quality and Compliance

Document revision record:

Revision Date	Release Date	Reason for change	Approver
10/27/05	10/27/05	Reasons for changes not documented	P Dancer
10/11/06	10/11/06	Reasons for changes not documented	P Dancer
5/19/08	5/19/08	Reasons for changes not documented	P Dancer
5/25/12	5/25/12	Reasons for changes not documented	P Dancer
10/24/14	10/24/14	Reasons for changes not documented	P Dancer
4/26/17	4/26/17	Reasons for changes not documented	P Dancer
10/21/19	10/21/19	Transitioned to new procedural format	P Dancer

4/1/21	6/8/21	Incorporated inducement and waiver of co-payments; included physician arrangements; added discrete sections for manager and VPQC	ICC
3/15/23	3/15/23	Specified whom this policy applies to	ICC
6/29/23	6/29/23	Typos corrected	ICC
5/17/24	6/26/24	Added clarifying language	ICC
9/25/24	9/25/24	Added Board committees as potentially being impacted by this policy	ICC
3/31/25	6/24/25	Clarified a term in one phrase	ICC
7/29/25	8/21/25	Revised the dollar amount of values of items that can be given to people we support to align with the federal Office of Inspector General Civil Monetary Penalty Rules regarding Beneficiary Inducements; defined cash, cash equivalents, and allowable gift cards.	ICC