0-7186 ANTI-KICKBACK AND SELF-REFERRAL

This policy was adopted on Feb. 23, 2015 and last revised Dec. 17, 2018.

Our Standard:

We believe we must demonstrate honesty and integrity at all times.

Our Policy:

BAYADA Home Health Care will maintain compliance with any Federal and State anti-kickback statutes, as well as the Stark physician self-referral law. BAYADA does not allow employees to solicit, receive, offer, or pay anything of value to induce referrals or services that might be paid for by Medicare or any other Federal or State health care program.

Our Procedure:

1.0 SUMMARY OF FEDERAL ANTI-KICKBACK STATUTE, 42. U.S.C. § 1320A-7B(B).

1.1 The Anti-Kickback Statute (AKS) prohibits the knowing and willful offer, solicitation, payment, or receipt of anything of value that is intended:

a. To induce the referral of an individual for which a payment may be made by Medicare and Medicaid or certain other Federal or State health care programs ("Covered Programs") or,

b. To induce the ordering, purchasing, leasing, or arranging for, or recommending the purchase, lease or ordering of, any service or time for which payment may be made by such Federal or State health care programs (collectively referred to as an illegal inducement). These programs include, but are not limited to:
   • Medicaid
   • Medicare
   • Tricare

1.2 The AKS applies to any arrangement where even one purpose of the remuneration offered, paid, received, etc. is to obtain or pay remuneration in exchange for referrals or to include referrals.

1.3 The AKS applies to any item or service that might be paid for by Medicare or
any other Federal or State health care program.

1.4 Both parties that participate in an impermissible "kickback" transaction can be found guilty of committing a felony crime, and can be subject to criminal and/or civil penalties and/or administrative sanctions.

1.5 Examples of arrangements that could potentially violate the AKS include: paying an individual or entity for referring home health patients, agreeing to utilize an individual or entity as a service provider or vendor in exchange for a referral of home health patients and service providers splitting payments with patients.

1.6 The Office of Inspector General (OIG) of the Department of Health and Human Services is responsible for interpreting the AKS and its applicability, as well as issuing regulatory and sub-regulatory guidance (such as advisory opinions). The OIG has issued regulatory "safe harbors" that offer protection to parties that enter into various payment and business practices that would potentially be prohibited by the AKS. These safe harbors are found in the Federal Regulations at 42 CFR § 1001.952.

1.7 In order for an arrangement to obtain the presumptive protection of the safe harbors, all elements of the applicable safe harbor must be met. If an arrangement does not meet all elements of the applicable safe harbor, the arrangement is not necessarily an illegal arrangement; however, the arrangement cannot receive the automatic rebuttable presumption of compliance with the AKS.

2.0 SUMMARY OF THE PHYSICIAN SELF-REFERRAL STATUTE, 42 U.S.C.§1395NN.

2.1 The Stark Law generally prohibits a physician from referring a patient to an entity with which the physician (or an immediate family member) has a financial relationship, for the furnishing of "designated health services" (DHS). Home health services, physical therapy, occupational therapy, speech therapy and durable medical equipment are some of the enumerated DHS, under the Stark Law.

2.2 Under the Stark Law, "financial relationships" include both direct and indirect relationships, as well as ownership and investment interests compensation arrangements.

2.3 The entity providing the DHS is not permitted to submit a claim to, or bill Medicare, Medicaid or any other payor source for DHS provided pursuant to a
referral by a physician who has a financial relationship (or whose immediate family member has a financial relationship) with the entity providing the DHS, unless an exception is met. To the extent that the entity has submitted billing, the money must be returned.

2.4 There are exceptions to the Stark Law which enable certain arrangements to be permissible when those arrangements would otherwise violate the Stark Law. Some of these permissible arrangements include, but are not limited to, employment arrangements, rental arrangements, and other arrangements in which compensation is paid for reasons unrelated to the referrals. To qualify for an exception the arrangement must meet specified criteria and:

a. be commercially reasonable;
b. be in writing and signed by both parties;
c. have a term for a minimum of one year;
d. set the compensation in advance, and such compensation must be consistent with fair market value, and not take into account the volume or value of referrals or other business generated by the physician;
e. not violate the AKS; and
f. must ensure that the services to be performed under the arrangement do not involve the counseling or promotion of a business arrangement or other activity that violates a federal or state law.

3.0 BAYADA’s contracts and arrangement with actual or potential referral sources will be reviewed by the Compliance Office, Legal Services, internal counsel, or external counsel, as applicable, and comply with all statutes and regulations.

3.1 The Chief Compliance Officer and Legal Services must review all agreements with joint venture partners, physicians, service providers, independent contractors, vendors, manufacturers, and suppliers before such agreements are executed.

4.0 BAYADA will ensure that any remuneration it pays or receives from or provides to any potential referral source is not a payment for referrals.

4.1 Gifts of substantial value to or extravagant entertainment of health care providers or other parties in a position to influence referrals are prohibited.

5.0 BAYADA does not submit or cause to be submitted to the Federal health care programs claims for patients who were referred to BAYADA pursuant to contracts or financial arrangements that were designed to induce such referrals in violation of the anti-kickback statute, Stark physician self-referral law, or similar Federal or
State statute or regulation.

6.0 BAYADA does not offer or provide gifts, free services, or other incentives to patients, relatives of patients, physicians, hospitals, contractors, assisted living facilities, or other potential referral sources for the purpose of inducing referrals in violation of the Anti-Kickback Statute, Stark physician self-referral law, or similar Federal or State statute or regulation.

6.1 No employee may offer, solicit, or accept, directly or indirectly, an improper payment (such as a bribe, kickback, or otherwise), to or from any person employed by or affiliated with BAYADA.

   a. An improper payment includes anything of value offered for the purpose of influencing the recipient to make a decision or take action favorable to BAYADA.
   b. This applies not only to money, but to anything of value, such as the use of supplier's property, services, or personnel, as well as expensive gifts or exorbitant entertainment.
   c. Moneys spent on items related to marketing or educational events are tracked to ensure that they are compliant with annual non-monetary compensation limits.

7.0 BAYADA maintains consideration of the OIG safe harbor regulations, which clarify those payment practices that would be immune from prosecution under the Anti-Kickback Statute.

8.0 Any BAYADA employee, independent contractor or vendor who identifies a potential Anti-Kickback Statute of Stark Law violation involving individuals or entities with whom BAYADA has a referral relationship should immediately contact the BAYADA toll-free Compliance Hotline at 1-866-665-4295.

9.0 The Chief Compliance Officer or designee shall investigate any and all reported violations in a timely manner, and in accordance with BAYADA's Compliance Program.

   9.1 The Chief Compliance Officer will recommend all necessary actions to prevent the reoccurrence of any such violations. The appropriate action(s) to be taken will depend on the specific violation, and include, but are not limited to, revisions of processes, policies, procedures and/or systems and disciplinary action.

10.0 POTENTIAL RISK AREAS.
10.1 **Joint Ventures.**

10.1.1 The joint venture will not make payments to the venture or one of its participants that could be viewed as disguised payments for past or future referrals (e.g., dividends or profit distributions). There will not be an improper nexus between the selection or retention of participants and the value or volume of their referrals.

10.1.2 There will not be an improper nexus between the selection or retention of participants and the value or volume of their referrals.

10.1.3 The participant already engaged in the line of business to be conducted by the joint venture will not win all or most of the equipment, provide, or perform all or most of the services, or take responsibility for all or most of the day to day operations.

10.2 **Compensation Agreements with Physicians.**

10.2.1 The items and service BAYADA obtains from a physician, if applicable, will be legitimate, commercially reasonable, and necessary to achieve a legitimate business purpose of BAYADA.

10.2.2 The compensation will represent fair market value in an arm's-length transaction for the items and services, and the determination of fair market value will be based upon a reasonable and uniformly applied methodology.

10.2.3 BAYADA will properly document the arrangement in writing.

10.3 **Discount.**

BAYADA will not engage in "swapping" by accepting from a supplier an unreasonably low price on services that BAYADA pays for out of its own pocket in exchange for home health referrals that are billable to BAYADA.

10.4 **Providing Non-Monetary Compensation to Physicians.**

BAYADA may not give or provide any gift or other non-monetary compensation, including meals and entertainment to any physician, including BAYADA Physicians Services personnel, and/or their immediate family members that:

10.4.1 Is provided as cash or a cash equivalent (i.e., gift card).

10.4.2 Takes into account the volume or value of referrals or other business
generated by the physician to whom the non-monetary compensation is given.

10.4.3 Is solicited by the physician or the physician’s staff or employees; and/or

10.4.4 Otherwise violates the Anti-Kickback Statute or any other federal or state law governing billing or claims submission.

10.4.5 **Exception:** If such non-monetary compensation does not violate any of the above guidelines, it may be given **provided that**, the total amount of non-monetary compensation given to any individual physician in a calendar year does not exceed the amount permitted under 42 CFR §411.357(k), which for calendar year 2017 is $398.00. Such compensation limit is adjusted each calendar year to the nearest whole dollar by the increase in the Consumer Price Index-Urban All item (CPI-U) for the 12 month period ending in the preceding September 30th.

10.4.6 Any and all such non-monetary compensation provided to a physician must be tracked, in written form, in a reasonable and logical manner by the BAYADA Office providing the compensation. A copy of such tracking must be made available to the Compliance Office, Legal Services or any other authorized party, upon request.

10.5 **Providing Free or Discounted Items and Services to Beneficiaries.**

BAYADA may NOT give or provide (or discount) any item or service to a Medicare, Federal health care program or State health care program beneficiary, including Medicaid, that it knows is likely to influence the beneficiary to order an item or service from BAYADA that may be paid in whole or in part by such health care program. The following exception applies:

10.5.1 **Exception:** BAYADA may provide items of nominal value to beneficiaries that value no more than $15 per item or $75 in the aggregate, per individual, on an annual basis (the amount currently approved by the Office of the Inspector General (OIG)), calculated based on actual retail value of the item. Cash and cash equivalents (i.e., gift cards) are prohibited.

10.5.2 Any and all such items of nominal value provided to beneficiaries must be tracked, in written form, in a reasonable and logical manner by the BAYADA office providing them. A copy of such tracking must
be made available to the Compliance Office, Legal Services or any other authorized party, upon request.

10.6 Accepting Pharmaceutical Supplies.
BAYADA and its employees may not accept pharmaceutical samples.

10.7 No Improper Marketing.
BAYADA employees must exercise independent judgement in all activities related to the provision of medical care. No interaction may directly or indirectly pose the risk of affecting clinical decision-making or attempt to impact clinical judgment. There may be no express or implied exchange of anything of value, nor any other payment, gift or benefit of any kind provided in order to obtain referrals in connection with the provision of clinical services. BAYADA clinical personnel are required to make treatment decision, prescribe drugs, and select medical devices solely on the basis of sound judgment.

11.0 RELATED POLICIES AND RESOURCES.

Policies

a. [policy 0-975]
b. [policy 37-2145]
c. [policy 0-4195]
d. [policy 37-2144]
e. [policy 37-2142]
f. [policy 37-2143]
g. [policy 0-9147]

Resources

a. Medicare Fraud and Abuse: Prevention, Detecting and Reporting
b. Safe Harbor Regulations, OIG Resource

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