

Professional Courtesy Marketing

Stark Phase II creates a new exception for "professional courtesy," defined as free or discounted health care items or services provided by an entity to a physician, his or her immediate family, or office staff. The giving of professional courtesy will not create a compensation relationship under the Stark law provided certain conditions are met:

- the professional courtesy must be offered to all physicians on the entity's medical staff or in the entity's community service area without regard to the volume or value of referrals or other business generated;
- the items or services must be routinely provided by the entity;
- the professional courtesy policy must be set out in writing and approved by the entity's governing body;
- **if coinsurance is reduced or waived the insurer must be informed in writing; Compliance with this clause makes it nearly impossible to comply with Stark II, which is why professional courtesy is rarely offered by knowledgeable physicians**
- **professional courtesy cannot be offered to a physician who is a Medicare or other federal health care program beneficiary unless there is a showing of financial need;**
- the arrangement cannot violate the anti-kickback statute.

source <http://www.ppsv.com/issues/starkII.htm>

(the National Society of Certified Healthcare Business Consultants' legal counsel)

Fee Splitting & Referral Fees/Gifts

Business practices considered standard in other industries may in the health care industry be considered kickbacks or inducements to patients.

Payment **by or to** a physician solely for the referral of a patient is fee splitting and is unethical.

Source; <http://www.ama-assn.org/ama/pub/category/8365.html> Issued prior to April 1977; Updated June 1994.

It may also be illegal by individual state law, and regarding Medicare, Medicaid and VA patients. Section 1128B(b) makes it illegal to offer, pay, solicit, or receive remuneration for referring patients or for arranging for or recommending the ordering of any service payable under Medicare or Medicaid. In *United States v. Greber* 760 F.2d 68, 69 (3rd Cir.), cert. denied, 474 U.S. 968 (1985) the Court held that, "if one purpose of the payment was to induce future referrals, the Medicare statute has been violated." The reasoning in *Greber* was adopted by the Ninth Circuit Court of Appeals in the *United States v. Kats* 871 F.2d 105 (9th Cir. 1989.) In *Kats* the Court found that the statute is violated unless the payments are incidentally attributable to referrals.

This handout is not intended to provide legal advice. Seek the advice of an attorney in your state.