

neither make nor accept payments intended, in whole or in part, to generate federal health care program business.

B. What Are "Safe Harbors"?

The department has promulgated "safe harbor" regulations that describe payment practices that do not violate the anti-kickback statute, provided the payment practice fits squarely within a safe harbor. The safe harbor regulations can be found at 42 CFR 1001.952 and on the OIG Web page at <http://oig.hhs.gov/fraud/safeharborregulations.html#1>. Compliance with the safe harbor regulations is voluntary. Thus, failure to comply with a safe harbor does not mean that an arrangement is illegal. Rather, arrangements that do not fit in a safe harbor must be analyzed under the anti-kickback statute on a case-by-case basis to determine if there is a violation. To minimize the risk under the anti-kickback statute, ambulance suppliers should structure arrangements to take advantage of the protection offered by the safe harbors whenever possible. Safe harbors that may be useful for ambulance suppliers include those for space rentals, equipment rentals, personal services and management contracts, discounts, employees, price reductions offered to health plans, shared risk arrangements, and ambulance restocking arrangements. (42 CFR 1001.952(b), (c), (d), (h), (i), (t), (u), and (v), respectively.)

C. What Is "Remuneration" for Purposes of the Statute?

Under the anti-kickback statute, "remuneration" means virtually anything of value. A prohibited kickback payment may be paid in cash or in kind, directly or indirectly, covertly or overtly. Almost anything of value can be a kickback, including, but not limited to, money, goods, services, free or reduced rent, meals, travel, gifts, and investment interests.

D. Who Are Referral Sources for Ambulance Suppliers?

Any person or entity in a position to generate federal health care program business for an ambulance supplier, directly or indirectly, is a potential referral source. Potential referral sources include, but are not limited to, governmental "9-1-1" or comparable emergency medical dispatch systems, private dispatch systems, first responders, hospitals, nursing facilities, assisted living facilities, home health agencies, physician offices, staff of any of the foregoing entities, and patients.

E. For Whom Are Ambulance Suppliers Sources of Referrals?

In some circumstances, ambulance suppliers furnishing ambulance services may be sources of referrals (*i.e.*, patients) for hospitals, other receiving facilities, and second responders. Ambulance suppliers that furnish other types of transportation, such as ambulette or van transportation, also may be sources of referrals for other providers of federal health care program services, such as physician offices, diagnostic facilities, and certain senior centers. In general, ambulance suppliers—particularly those furnishing emergency services—have relatively limited abilities to generate business for other providers or to inappropriately steer patients to particular emergency providers.

F. How Can Ambulance Suppliers Avoid Risk Under the Anti-Kickback Statute?

Because of the gravity of the penalties under the anti-kickback statute, ambulance suppliers are strongly encouraged to consult with experienced legal counsel about any financial relationships involving potential referral sources. In addition, ambulance suppliers should review OIG guidance related to the anti-kickback statute, including advisory opinions, fraud alerts, and special advisory bulletins. Ambulance suppliers concerned about their existing or proposed arrangements may obtain binding advisory opinions from the OIG.

Ambulance suppliers should exercise common sense when evaluating existing or prospective arrangements under the anti-kickback statute. One good rule of thumb is that all arrangements for items or services should be at fair market value in an arms-length transaction not taking into account the volume or value of existing or potential referrals. For each arrangement, an ambulance supplier should carefully and accurately document how it has determined fair market value. As discussed further in appendix A.4, an ambulance supplier may not charge Medicare or Medicaid substantially more than its usual charge to other payors.

Ambulance suppliers should consult the safe harbor for discounts (42 CFR 1001.952(h)) when entering into arrangements involving discounted pricing. In most circumstances, ambulance suppliers who offer discounts to purchasers who bill federal programs must fully and accurately disclose the discounts on the invoice, coupon, or statement sent to purchasers and inform purchasers of the

purchasers' obligations to report the discounts to the federal programs. Accurate and complete records should be kept of all discount arrangements.

Ambulance suppliers should exercise caution when selling services to purchasers who are also in a position to generate federal health care program business for ambulance suppliers (*e.g.*, SNFs or hospitals that purchase ambulance services for private pay and Part A patients, but refer Part B and Medicaid patients to ambulance suppliers). Any link or connection, whether explicit or implicit, between the price offered for business paid out of the purchaser's pocket and referrals of federal program business billable by the ambulance supplier will implicate the anti-kickback statute.

An ambulance supplier should not offer or provide gifts, free items or services, or other incentives of greater than nominal value to referral sources, including patients, and should not accept such gifts and benefits from parties soliciting referrals from the ambulance supplier. In general, token gifts used on an occasional basis to demonstrate good will or appreciation (*e.g.*, logo key chains, mugs, or pens) will be considered to be nominal in value.

G. Are There Particular Arrangements to Which Ambulance Suppliers Should Be Alert?

Ambulance suppliers should review the following arrangements with particular care. (This section is intended to be illustrative, not exhaustive, of potential areas of risk under the anti-kickback and beneficiary inducement statutes.)

1. Arrangements for Emergency Medical Services (EMS)

a. Municipal Contracts

Contracts with cities or other EMS sponsors for the provision of emergency medical services may raise anti-kickback concerns. Ambulance suppliers should not offer anything of value to cities or other EMS sponsors in order to secure an EMS contract. (In general, ambulance suppliers may provide cities or other municipal entities with free or reduced cost EMS for uninsured, indigent patients.) In addition, arrangements that cover both EMS and non-EMS ambulance business should be carefully scrutinized; conditioning EMS services on obtaining non-EMS business potentially implicates the anti-kickback statute. Absent a state or local law requiring a tie between EMS and non-EMS business, ambulance suppliers