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	<b>EFFECTIVE DATE:</b> 8/15/03	<b>NUMBER:</b> 9309
	<b>ORIGINATOR:</b> Corporate Compliance Committee	
<b>ORGANIZATIONAL POLICY</b>  <b>Anti-Kickback Guidelines for Payments, Discounts, Gifts, and Meals</b>	<b>CONCURRENCE:</b> Executive Vice President Operations VP Chief Financial Officer VP Chief Medical Officer VP Community Relations/Executive Director Foundation	
	<b>APPROVAL:</b> <b>CEO/PRESIDENT</b>	

**Purpose of Policy**

- A. To ensure compliance with all applicable laws governing "kickbacks" and "fraud and abuse".
- B. To identify situations that will be in violation of the anti-kickback laws.
- C. To define all applicable laws.

**Scope**

This policy applies to all Ellis Hospital employees.

**Guidelines**

A. Federal Programs

Medicare is a federal program which provides health insurance to the aged and disabled. The Medicaid program is a federal/state program which provides health care coverage to low income persons. Federal law makes it illegal for Ellis Hospital to provide or accept remuneration in exchange for referrals of patients covered by Medicare and Medicaid. The law also bars the payment or receipt of such remuneration in return for directly purchasing, leasing, ordering, or recommending the purchase, lease or ordering of any goods, facilities, services, or items covered under the Medicare or Medicaid program.

B. Anti-Kickback Laws

The federal and state anti-kickback laws are broadly written to prohibit Ellis Hospital and its representatives from knowingly and willfully offering, paying, soliciting, or receiving any money or other benefits, directly or indirectly, in return for obtaining or rewarding favorable treatment in connection with the award of a government contract. The anti-kickback laws must be considered whenever something of value is given or received by the Hospital or its representatives or affiliates that are in any way connected to patient services.

#### C. Safe Harbors

The U.S. Department of Health and Human Services has described a number of payment practices that will not be subject to criminal prosecution under the anti-kickback laws. The intent is to help providers protect themselves against abusive payment practices while permitting legitimate ones. However, failure to satisfy every element of a Safe Harbor does not in itself make an arrangement illegal. Analysis of a payment practice under the anti-kickback laws and Safe Harbors is complex, and depends upon the specific facts and circumstances of each case.

#### D. Meals

The Hospital recognizes that business dealings may occasionally include a shared meal provided by a vendor. The meals may be offered and accepted if they are not of substantial value (less than \$100 per person per year) and may be considered a proper business expense and activity. Such meals should not be offered or accepted on more than an occasional basis. Occasional meals, in conjunction with an educational presentation or seminar, may also be offered and accepted if they are modest as judged by local standards and occur in a venue and manner conducive to informational communication and provide scientific or educational value. Offering or accepting "take-out" meals or meals to be eaten without a company representative being present is not appropriate. More extensive personal entertainment or recreational events may not be offered to or solicited or accepted by Hospital employees. Payments in cash or cash equivalents (such as a gift certificate) may not be offered, solicited, or accepted by Hospital employees, either directly or indirectly.

#### E. Gifts

Gifts from vendors may be offered to and accepted by Hospital employees when they are of such limited value (less than \$100 per person per year) they could not reasonably be perceived by anyone as an attempt to influence the judgment of the recipient. Items of nominal value may be offered and accepted if they are primarily associated with a healthcare professional's practice (such as pens, notepads, and similar "reminder" items with company or product logos). Gifts of cash or cash equivalents (such as a gift certificate) may not be offered, solicited, or accepted by Hospital employees, either directly or indirectly. Items primarily for the benefit of patients may be offered to and accepted by Hospital employees if they are not of substantial value (\$100 or less). Such items should not be offered or accepted on more than an occasional basis, even if each individual item is appropriate. More expensive items (\$100 or more), cash and cash equivalents must be donated to the

Hospital Foundation.

**F. Penalties**

Violation of the anti-kickback laws is a felony, punishable by a \$25,000 fine or imprisonment for up to five years, or both. Violation of the law could also mean that the Hospital and /or a physician is excluded from participating in the Medicare and Medicaid programs for up to five years.

**G. New York State Law**

New York State Law, specifically, Public Health Law, Section 587 governs Laboratory business practices and makes it unlawful for any health services provider to solicit, receive, accept or agree to accept any payment or other consideration for the referral of services. Violations of this statute constitute a Class A misdemeanor and are punishable by imprisonment, a fine of not less than \$500 nor more than \$10,000, a fine not to exceed double the value of any property received in violation of the statute, or both a fine and imprisonment.

**Procedures**

A. Employees in departments that enter into personal service contracts are expected to be vigilant in identifying potential anti-kickback violations and bring them to the attention of the Corporate Compliance Officer.

B. No one acting on behalf of Ellis Hospital may offer gifts, loans, rebates, services or payment of any kind to a physician who refers patients to the Hospital, or to a patient, without consulting the Corporate Compliance Officer.

C. The Corporate Compliance Officer should review any discounts offered to Ellis Hospital by suppliers and vendors, as well as discounts offered by the Hospital to insurance companies or other third party payers.

D. Patient deductibles and co-payments may not be waived without the prior authorization of the Corporate Compliance Officer.

E. Rentals of space and equipment must be at fair market value, without regard to the volume or value of referrals that may be received by the Hospital in connection with the space or equipment. Fair market value should be determined through an independent appraisal.

F. Agreements for professional services, management services, and consulting services must be in writing, have at least a one-year term, and specify the compensation in advance. Payments based on a percentage of revenue should be avoided in any circumstances.

G. Clinical decisions must be based on identified patient health care needs, regardless of any contractual or financial risk-sharing arrangements. Monitoring of compliance will be

done through the Ellis program for monitoring one standard of care across the organization.

H. Employees should not make unilateral judgments on the availability of a Safe Harbor for a payment practice, investment, discount, or other arrangement. These situations must be brought to the attention of the Corporate Compliance Officer for review with legal counsel.

I. Hospital employees may not solicit or receive any gift under circumstances that could be construed as an improper attempt to influence Ellis Hospital's or an employee's decisions or actions. Nothing should be offered/provided or solicited/accepted in a manner or on conditions that would interfere with the independent judgment of a Hospital employee.

J. When an employee is offered or receives a gift that violates this policy, the gift should be declined or returned to the donor and reported to the Corporate Compliance Officer.

## **EXHIBITS**

## **REFERENCES**

OIG/State/Federal laws

ORIGINAL IMPLEMENTATION DATE: 5/06/97

REVIEW DATE: 5/99, 12/02, 07/06

REVIEWED: 12/00, 08/03

REVISED: 3/03, 7/03