

Title: Compliance: Business Courtesies to Physicians and Immediate Family Members		
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Approved by: Administrative Policy Committee, Chief Legal Officer/General Counsel, PolicyTech Administrators		
Discrete Operating Unit/Facility: Banner Baywood Medical Center Banner Behavioral Health Hospital Banner Boswell Medical Center Banner Casa Grande Medical Center Banner Churchill Community Hospital Banner Del E Webb Medical Center Banner Desert Medical Center Banner Estrella Medical Center Banner Fort Collins Medical Center Banner Gateway Medical Center Banner Goldfield Medical Center Banner Heart Hospital Banner Ironwood Medical Center Banner Lassen Medical Center Banner Ocotillo Medical Center Banner Payson Medical Center Banner Thunderbird Medical Center Banner--University Medical Center Phoenix Banner--University Medical Center South Banner--University Medical Center Tucson East Morgan County Hospital McKee Medical Center North Colorado Medical Center Ogallala Community Hospital Page Hospital Platte County Memorial Hospital Sterling Regional Medical Center Torrington Community Hospital Washakie Medical Center Wyoming Medical Center		Banner Corporate Ambulatory (Outpatient) Services Banner Health Clinics Banner Imaging Services Banner Imaging Services Colorado Banner MD Anderson Cancer Center Banner Sleep Center Banner Surgery Centers Banner Urgent Care Services Occupational Health/Employee Health Services Rural Health Clinics Banner Home Care and Hospice (BHCH) Banner Pharmacy Services Post Acute Services (PAC) Research

I. Purpose/Population:

- A. **Purpose:** To establish parameters governing the extension and recording of Business Courtesies from Banner Health (Banner) employees or agents to Physicians and their Immediate Family Members in order to maintain compliance with Federal and State laws and regulations, including, but not limited to, the Physician Self-Referral Law (Stark Law) and the Anti-Kickback statute. The Stark Law, in particular, limits Business Courtesies to Physicians and their Immediate Family Members to the Annual Monetary Limits.
- B. **Population:** All Employees.

II. Definitions:

- A. **Annual Monetary Limits:** The annual dollar limit for NMC that is annually adjusted by the increase in the Consumer Price Index-Urban All Items (CPI-U) for the 12-month period ending the preceding September 30. Exhibit A lists the current Annual Monetary Limit.
- B. **Anti-Kickback Statute:** Federal law that prohibits the knowing and willful offer or payment of “remuneration”, directly or indirectly, overtly or covertly, to induce or reward patient referrals or the generation of business involving any item or service payable by a Federal health care program. Remuneration includes anything of value.
- C. **Banner Employed Physician:** A Physician or group of Physicians who are employees of Banner or of an affiliate or subsidiary of Banner, including Physicians employed by Banner Medical Group, Banner Medical Group Colorado, and Banner - University Medical Group. For purposes of this policy, Banner Employed Physician includes the Banner Employed Physician and/or any Immediate Family Member of the Banner Employed Physician.
- D. **Business Courtesies:** Gifts and entertainment from Banner or from Banner employees or agents to Physicians and their Immediate Family Members. They include items of value given to a Physician or an Immediate Family Member free of cost; social events sponsored or hosted by Banner such as meals, sporting events, theatrical events, and receptions; and items of value that are funded personally by a Banner employee or agent, acting on Banner’s behalf, regardless of whether or not it is reimbursed as a business expense, except as provided in Exhibits B and C. For purposes of this policy, any gifts, entertainment or other items of value paid for from medical staff accounts are considered to be Business Courtesies. Business Courtesies also include both Medical Staff Incidental Benefits and Non-Monetary Compensation, as defined below.
- E. **Cash Equivalents:** Items convertible to cash (such as a check) or that can be used like cash (such as a general purpose debit card, but not a gift card that can be redeemed only at certain stores for a certain purpose, like a gasoline gift card).
- F. **Immediate Family Member:** Husband or wife; birth or adoptive parents, child or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.
- G. **Medical Staff Incidental Benefit (MSIB):** Remuneration in the form of items or services (not including cash or cash equivalents) from a hospital to a member of its medical staff when the item or service is used on the hospital’s campus. The value of the benefit is adjusted annually by the increase in the Consumer Price Index-Urban All Items (CPI-U) for the 12-month period

ending the preceding September 30. Exhibit A lists the current Medical Staff Incidental Benefit Amount.

- H. Non-Monetary Compensation (NMC): Remuneration from an entity in the form of items or services (not including cash or cash equivalents). NMC's Annual Monetary Limit is adjusted annually by the increase in the Consumer Price Index-Urban All Items (CPI-U) for the 12-month period ending the preceding September 30. Exhibit A lists the current Annual Monetary Limit for NMC.
- I. Physicians: Includes a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor, whether or not an employee of a Banner affiliated entity. It does not include any such doctors who do not practice clinical care or order tests for patients (e.g., physicians who provide non-clinical consulting or other leadership services to a Banner-affiliated entity and do not provide clinical services).
- J. Solicit: Means to request or ask for a Business Courtesy. It does not include a situation in which a Physician asks for something that is commonly known to be available.
- K. Stark Law (Physician Self-Referral Law): Federal law that prohibits physicians from referring patients for services payable by Medicare or Medicaid, to entities with which the Physician, or an Immediate Family Member, has a financial relationship, unless an exception applies.

III. Policy:

- A. Except for Banner Employed Physicians, all Business Courtesies offered or provided to Physicians and/or their Immediate Family Members must:
 - 1. be either NMC or MISB and meet all applicable guidelines stated in this Policy; and
 - 2. not be offered or provided as an inducement to refer patients or business or as a reward for such referrals.

Note: Business Courtesies extended to individuals and entities other than Physicians are governed by Banner's Code of Conduct, and the *Service Recovery* policy. The Code of Conduct and the *Compliance: Acceptance of Items from Outside Business Associates* policy also address receipt by Banner employees of gifts and entertainment **from** business associates, including, but not limited to, Physicians.

B. Permissible Business Courtesies Consistent with Applicable Stark Law Exceptions

- 1. **NMC:**
 - a. NMC Requirements. Consistent with the NMC exception to the Stark Law, a Banner employee or agent may provide a Physician and/or their Immediate Family Member, Business Courtesies that do not aggregately exceed the Annual Monetary Limit, \$452 for 2022, so long as all of the following conditions are met:
 - i. The compensation is not determined in any manner that takes into account the volume or value of referrals or other business generated by the referring Physician.
 - ii. The compensation is not solicited by the Physician or the Physician's practice (including employees and staff members).

- iii. The compensation arrangement does not violate the Anti-Kickback Statute or any Federal or State law or regulation governing billing or claims submission.
- b. NMC: Examples of NMC Business Courtesies are included in Exhibit B.
- c. Tracking NMC:
All Business Courtesies extended to a Physician and/or their Immediate Family Member must be tracked in the Stark NMC database in accordance with Exhibit D.
- d. NMC in Excess of Limits: Where an entity has inadvertently provided NMC to a Physician in excess of the Annual Monetary Limit contained in Exhibit A, such compensation is deemed to be within the limit if:
 - i. The value of the excess NMC is no more than 50% of the Annual Monetary Limit; and
 - ii. The Physician returns the excess NMC (or an amount equal to the value of excess NMC) to the entity by the end of the calendar year in which it was received or within 180 consecutive calendar days following the date the it was received by the Physician, whichever is earlier.

Note: This repayment provision may be used by an entity only once every 3 years with respect to the same Physician.

2. **MSIB:**

- a. MSIB Requirements: Consistent with the MSIB exception to the Stark Law, Banner may provide items or services that are used on the hospital's campus to members of its medical staff, so long as the following conditions are met:
 - i. The compensation's value is less than \$39, for 2022, with respect to each occurrence of the benefit.
 - ii. The compensation is offered to all members of the medical staff practicing in the same specialty (but not necessarily accepted by every member to whom it is offered) and is not offered in a manner taking into account the volume or value of referrals or other business generated between the parties.
 - iii. Except with respect to identification of medical staff on a hospital Web site or in hospital advertising, the compensation is provided only during periods when the medical staff members are making rounds or are engaged in other services or activities that benefit the hospital or its patients.

Note: For more information on physician advertising, see Banner Health's Physician Advertising policy listed under Section VIII.

- iv. The compensation is provided by the hospital and used by the medical staff members only on the hospital's campus. Compensation, including, but not limited to, internet access, pagers, or two-way radios, used away from the campus only to access hospital medical records or information or to access patients or personnel who are on the hospital campus, as well as the identification of the medical staff on a hospital Web site or in hospital advertising, will meet the "on campus" requirements of this paragraph.

- v. The compensation is reasonably related to the provision of, or designed to facilitate directly or indirectly the delivery of, medical services at the hospital.
 - vi. The compensation is of low value, (that is, less than the Medical Staff Benefit contained in Exhibit A) with respect to each occurrence of the benefit (for example, each meal given to a Physician while he or she is serving patients who are hospitalized must be of low value).
 - vii. The compensation is not determined in any manner that takes into account the volume or value of referrals or other business generated between the parties.
 - viii. The compensation arrangement does not violate the Anti-Kickback Statute or any Federal or State law or regulation governing billing or claims submission.
- b. MSIB Examples. Examples of MSIB Business Courtesies are included in Exhibit C.
 - c. Tracking MSIB. Business Courtesies that meet the conditions of an MSIB under III.B.2.a do not need to be entered into the Stark NMC database.

IV. Procedural Documentation:

- A. N/A

V. Additional Information:

- A. N/A

VI. References:

- A. The Ethics in Patient Referrals Act, Social Security Act Sec. 1877; (Stark) Law, 42 U.S.C. § 1395nn; Exceptions: 42 C.F.R. §§ 411.350-389.
- B. The Federal Anti-Kickback Statute, Social Security Act Sec. 1128B(b), 42 USC Sec. 1320a-7b(b); Safe Harbors: 42 C.F.R. § 1000.952.
- C. The CMS website listing the Annual Monetary Limit and the Medical Staff Benefit Amount: www.cms.hhs.gov.physicianselfreferral/10_cpi-U_updates.asp.

VII. Other Related Policies/Procedures:

- A. [Business Courtesies to Potential Referral Sources FAQ](#)
- B. [Code of Conduct](#)
- C. [Service Recovery, #788](#)
- D. [Compliance: Acceptance of Items from Outside Business Associates, #256](#)
- E. [Physician Advertising, #761](#)

VIII. Keywords and Keyword Phrases:

- A. Stark Law
- B. Stark
- C. Physician Self-Referral Law
- D. Non-Monetary Compensation
- E. NMC
- F. Medical Staff Incidental Benefits
- G. Anti-Kickback
- H. Business Courtesies

IX. Appendix:

- A. Exhibit A-NMC Annual Monetary Limits and MSIB Amount
- B. Exhibit B-NMC Examples
- C. Exhibit C-MSIB Examples
- D. Exhibit D-Tracking Non-Monetary Compensation-Job Aid

Exhibit A

Calendar Year	Annual Monetary Limit	Medical Staff Benefit Amount
2020	\$423	Less than \$36
2021	\$429	Less than \$37
2022	\$452	Less than \$39

Exhibit B

NMC Examples

Examples of Business Courtesies that are considered NMC and must be tracked by the Banner entity providing it, include, but are not limited to, the following:

- a. Paying for business meals for Physicians and their Immediate Family Members;
 - a.1. If a Banner employee or agent has a personal relationship with a Physician and/or Immediate Family Member and socializes with such individual(s), they may personally pay for the cost of the meal and it would not be considered Business Courtesies.
- b. Paying for local recreational events, such as fishing, boating, hunting, and golfing (including cart fees and meals), but excluding the value of the charitable contribution, if the events are charity events;
- c. Providing tickets for non-employed Physicians and/or their Immediate Family Member for sporting or similar events (including movies);
- d. Providing flowers or other gifts to non-employed Physicians and their Immediate Family Members when they are hospitalized or to recognize a birthday, death, or other family occasion;
- e. Providing gifts to non-employed Physicians and/or their Immediate Family Members in recognition of the holidays, Doctor's Day, or other special occasions, unless the gifts meet the MSIB exception (See III.B.2. in the policy and Exhibit C);
- f. Paying for CME program costs (unless costs are to be paid for pursuant to a written professional services agreement that contemplates CME's or otherwise fall within another Stark Law exception-obtain approval from the Ethics & Compliance Department).
- g. Hosting or funding holiday or other parties for Physicians and their Immediate Family Members other than the one annual medical staff appreciation event listed below; and
- h. Sending perishable items to the office of a Physician when it is anticipated that the Physician will share in the enjoyment of the items.
 - i. The value to each Physician in the practice is the total cost of the items divided by the number of persons who may enjoy the benefit of the items (i.e., total number of Physicians and employees in the practice).
 - ii. If Physicians are expected to participate, or are known to have participated, in a modest meal that the facility provided a practice, the facility is to attribute \$10 toward each Physician's Annual Monetary Limit.

Example of Business Courtesies that **are** NMC but do not need to be tracked by the Banner entity providing it, include, but are not limited to, the following:

- a. Examples of activities meeting the MSIB exception (See III.B.2. in the policy and Exhibit C).
- b. Examples of activities meeting another Stark Law exception include, but are not limited to, the following:
 - i. Gifts, entertainment, or other items of value given to a Banner Employed Physician or his or her Immediate Family Member by a Banner employee
 - ii. Hosting a party at the facility to introduce the medical staff to the facility's new Chief Executive Officer;
 - iii. Hosting one local medical staff appreciation event (such as a holiday party) per year for the entire medical staff.

Note: Any gifts or gratuities provided in connection with the event (such as door prizes) are subject to the Annual Monetary Limit and must be tracked.
 - iv. Providing items in exchange for their fair market value price pursuant to a written agreement or other appropriate Stark law exception;
 - v. Paying for services provided by a Physician pursuant to a personal services agreement or providing business-related meals where the purpose is to discuss the Physician's duties under the services agreement when (i) the agreement specifically contemplates such meals and (ii) the meal is modest as judged by local standards and occurs in a venue conducive to conducting a meeting;
 - vi. Providing items or services pursuant to the provisions of a letter of appointment or meals for Physicians who attend a committee meeting of the facility's medical staff;
 - vii. Providing items (including stipends and end of term gifts) covered under a medical staff leadership agreement so long as the items are relevant to the scope of the responsibilities of the Physician under the Agreement and are covered by the Agreement;
 - viii. Providing compliance training to a Physician (or his or her office staff) who practices in the entity's community or service area, providing the training is held in the local community or service area;
 - ix. Paying for the expenses associated with medical staff retreats off of the facility campus pursuant to a written agreement between the facility and the Physician; and
 - x. Reimbursing a Physician for reasonable recruitment expenses pursuant to a written agreement between the facility and the Physician or in accordance with a recruiting agreement.

Notes:

For additional guidance on Business Courtesies related to Non-Monetary Compensation, consult the Business Courtesies to Potential Referral Sources FAQ, included under Section VII.

If your Business Courtesy is not included above, contact the Ethics and Compliance Department for approval.

Exhibit C.

Medical Staff Incidental Benefits

Examples of Business Courtesies that are MSIB, include, but are not limited to, the following:

- i. Free/discounted meals (such as meals served in the Physician's lounges);
- ii. Free computer/internet access on hospital campuses;
- iii. Free parking; and
- iv. Free lab coats

Exhibit D

Tracking Non-Monetary Compensation-Job Aid

The below job aid is intended to assist with tracking NMC under this policy.

1. Tracking Non-Monetary Compensation.

- a. All Business Courtesies must be reported by the employee or agent providing the Business Courtesy to the entity's Medical Staff Services Department on whose behalf the courtesy was offered, and tracked in the Stark NMC Database, which is located at <http://intranet7.bannerhealth.com/Stark/GuideLines.aspx>
- b. The value (rather than the cost) of Business Courtesies should be tracked in the database.
- c. The value of de minimis gifts, entertainment or other items of value distributed on a broad basis to a group of Physicians (or their Immediate Family Members) may be allocated to each Physician individually or, if this is impracticable, to all the members of the group who are eligible to receive the gift or other item of value.

For example, de minimis appreciation gifts for a facility's medical staff (e.g., Doctor's Day) or for a particular clinical department (e.g., surgery) may be allocated to each member of the group without having to track and identify those members of the group who received the gift and those who did not.

- d. The Annual Monetary Limit for Business Courtesies applies to each Banner hospital provider number.

For example, Banner-University Medical Center Phoenix may provide items or services to a Physician up to the Annual Monetary Limit each year, and Banner Estrella Medical Center may provide items or services to the same Physician up to the Annual Monetary Limit each year.

- e. Business Courtesies from the Banner Recruitment Offices or other comparable areas must be allocated among the hospitals where the Physician has (or will have) staff privileges unless it is clearly related to only one hospital. If the Physician is not a member of a hospital medical staff, the amount should be allocated to the hospital to which he or she refers patients.

2. Providing Business Courtesies (Banner employee).

- a. Check the Stark NMC Database to determine whether the proposed Business Courtesy for a particular Physician or Immediate Family Member would exceed the Annual Monetary Limit.
- b. Comply with any other required procedures to provide a Business Courtesy (e.g., obtain approval from the facility's CEO or other senior manager).
- c. Enter the value of the Business Courtesy and other requested information in the Stark NMC Database.

3. Completing Attestation if no Business Courtesies were Given in a Quarter (Banner employee).
- a. If no Business Courtesies were given to any Physician or their Immediate Family Members for the facility during a quarter, the Medical Staff Services Director, of designee, must check the box on the home page of the Stark NMC Database to indicate that “there was no Non-Monetary compensation to report for the quarter.”

Note: Do not check this box if any Business Courtesies were given to Physicians or their Immediate Family Members during the quarter.

4. Exceeding the Annual Monetary Limit for any Physician (Banner employee).
- a. The Medical Staff Services Director, or designee, must immediately contact the Ethics & Compliance Department, if the Annual Monetary Limit is exceeded for any Physician.