

L-1 BUSINESS COURTESIES TO PHYSICIANS AND IMMEDIATE FAMILY MEMBERS

FREQUENTLY ASKED QUESTIONS

February 28, 2005, March 1, 2007, November 1, 2008, September 7, 2011

Updated: February 1, 2017

1. **Question:** (i) Can a hospital provide free or discounted benefits such as meals and refreshments, parking and computer/Internet access if such items are provided on the hospital's campus? (ii) Can a hospital provide pagers or two way radios that will be used away from the hospital campus to only access hospital medical records or information or to access patients or personnel who are on the hospital campus? (iii) Can a hospital provide lab coats to its medical staff?

Answer: (i) Yes. Free or discounted meals, parking and computer/Internet access provided in the hospital are covered under the medical staff incidental benefits exception and are generally permitted with certain limitations. The incidental benefits are excepted under the medical staff incidental benefits exception if the benefits are (i) provided by a hospital to all members of the medical staff practicing in the same specialty (but does not have to be accepted by every member to whom it is offered) without regard to the volume or value of referrals or other business generated between the parties, (ii) 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 and its patients, (iii) provided by the hospital and used by the medical staff members only on the hospital's campus, (iv) reasonably related to the provision of, or designed to facilitate directly or indirectly the delivery of, medical services at the hospital, and (v) of low value (that is, less than \$25, adjusted annually for inflation) with respect to each occurrence of the benefit.

Answer: (ii) Yes. Under the medical staff incidental benefits exception, a hospital may provide pagers or two way radios that will be used away from the hospital campus to access only hospital medical records or information or to access patients or personnel who are on the hospital campus. Under the Stark II Phase II regulations, the "on the hospital's campus" requirement is relaxed so that pagers and two way radios may be used off campus provided the only purpose is to access hospital medical records or information or to access patients or personnel who are on the hospital campus.

Answer: (iii) Yes. Under the medical staff incidental benefits exception a hospital may provide lab coats to physicians on its medical staff provided that the cost per lab coat (inclusive of any monogram cost) does not exceed \$25, adjusted annually for inflation. If the cost exceeds the \$25 limit, adjusted annually for inflation, the total cost of the lab coat shall be added to the non-monetary compensation log. The provision of a lab coat needs to be provided to all members of the medical staff practicing in the same specialty (but does not have to be accepted by every member to whom it is offered). As examples: (a) a hospital facility may provide all active medical staff members a lab coat on Doctors' Day; or (b) a hospital may provide its medical staff with a lab coat upon appointment or reappointment to the medical staff. Generally, only one or two lab coats should be provided to a medical staff member on an annual basis.

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2. **Question:** Can the hospital's administration ask physicians to (i) attend dinner at a restaurant to discuss issues relating to hospital operations, e.g, OR scheduling and operations, staffing, equipment purchases, etc.; (ii) attend dinner at a restaurant with a recruit when the purpose of the meeting is to recruit that physician or other provider to the community and is pursuant to an executed letter agreement that is available on the CAM or furnished by its Regional Counsel (iii) attend a dinner to discuss issues relating to the physician's duties under a medical directorship or other written agreement; (iv) accompany a hospital administrator to a dinner for the purpose of educating another physician about available hospital programs, including the quality of patient care and patient outcomes, available hospital services including medical techniques and technology available at the hospital, (v) attend dinner or present to physicians that are in a position to refer business to the hospital when the presentation or discussion does not substantially include one-on-one discussion with a hospital administrator concerning hospital programs.

Answer: (i) Tenet will consider the cost of the meal as constituting "remuneration" subject to the \$300 cap, adjusted annually for inflation, under the non-monetary compensation exception even if there is a primary business purpose for the meal. The meal should be modest as judged by local standards and occur in a venue conducive to conducting a meeting. Please note that this includes meals paid by senior management.

Answer: (ii) Tenet will not consider the cost of a meal as constituting "remuneration" subject to the \$300 cap when the hospital invites an existing member of the medical staff and their spouse to a dinner meeting with a recruit when the purpose of the meeting is to recruit that physician or other provider to the community and is pursuant to an executed agreement that is available on the CAM or furnished by its Regional Counsel. As a general rule the hospital should limit the number of medical staff in attendance to two or three physicians to allow discussions reasonably conducive to the recruit's interest in relocating to the community. A medical staff member's spouse and/or hospital administrator's spouse should generally only be included at a recruitment dinner when the recruit is also accompanied by a spouse. The meal should be modest as judged by local standards and occur in a venue conducive to conducting a meeting. Please note that this includes meals paid by senior management.

Answer: (iii) A hospital may pursuant to a personal services agreement (e.g., a medical directorship agreement) that provides for it, pay for a meal with a physician to discuss issues relating to the physician's duties under the agreement, provided the meal is modest as judged by local standards and occurs in a venue conducive to conducting a meeting. The physician can also log the time spent with the CEO discussing the duties. If the physician's spouse is in attendance at the meeting to discuss the physician's duties under the agreement, then the meal for both the physician and the spouse will be subject to the \$300 cap under the non-monetary compensation exception.

Answer: (iv) (a) Physician Educator. Tenet will not consider the cost of a meal as constituting "remuneration" subject to the \$300 cap when the hospital invites a member of the medical staff to a dinner meeting if the primary purpose of the event is to educate an invited guest physician about hospital programs, including the quality of patient care and outcomes, hospital services, specialized medical techniques and technology available and is pursuant to an executed agreement that is available on the CAM or furnished by its Regional Counsel.

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Answer: (iv) (b) Physician Invitee. Tenet will consider the cost of the meal as constituting “remuneration” subject to the \$300 cap for the physician invitee attending the dinner in order to learn more about the hospital’s programs and should be added to the non-monetary compensation log.

For both subsections (a) and (b), the meal should be modest as judged by local standards and occur in a venue conducive to conducting a meeting. As a general rule, spouses should not be included. Please note that this includes meals paid by senior management.

Answer: (v) A hospital may not at its expense invite a medical staff member to present to physician(s) who are in a position to refer business to the hospital when the presentation or discussion does not focus primarily on hospital programs and substantially include one-on-one discussion with a hospital administrator.

3. **Question:** (i) Can the hospital’s administration ask physicians and their spouses to attend sporting events or other similar events such as theater and concerts? (ii) Can the hospital’s administration give tickets to these events to physicians without attending the event? (iii) Can a physician purchase sports tickets from the hospital?

Answer: (i) Yes, subject to limitation. For non-luxury box tickets, Tenet will consider the face value of the ticket as constituting “remuneration” subject to the \$300 cap under the non-monetary compensation exception, regardless if the purpose is business or pleasure. For luxury box tickets, the hospital will have to determine the value of the tickets under one of the following two methods: if the stadium leases suites to the general public on a per game basis, then the value of the ticket could be valued by taking the cost of leasing a comparable suite for that game divided by the number of tickets. For instance, the Mavericks advertise to the public that you can lease a suite for \$2,500 for one game and it entitles the buyer to 20 tickets. The value of the ticket in this case is \$125. Alternatively, the hospital can contact the Assistant General Counsel for guidance on how to calculate the fair market value of the ticket in the case a stadium leases a suite that includes not only the seats and food/beverage, but advertising rights as well. Further, if a meal is provided at the event, a pro rata allocation of the cost of the meal based on the number of invitees shall be counted towards the \$300 cap under the non- monetary compensation exception. It should also be noted that neither the physician nor the physician’s practice may solicit the tickets under the non-monetary compensation exception.

Answer: (ii) Yes. The fair market value of the ticket as set forth above in response (i) would constitute “remuneration” under the non-monetary compensation exception and count towards the \$300 limitation. It should also be noted neither the physician nor the physician’s practice may solicit the tickets under the non- monetary compensation exception.

Answer: (iii) Yes. A physician may purchase tickets from the hospital provided the hospital charges fair market value for the ticket. The fair market value can be determined as set forth above in response (i) above. If the physician pays fair market value for the ticket, then this amount is not counted towards the \$300 cap since the physician paid fair market value for the ticket.

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4. **Question:** Can the hospital's administration take a physician golfing?

Answer: Yes, subject to limitations. Tenet will consider the cost of green fees, cart fees and meals as constituting "remuneration" subject to the \$300 cap under the non-monetary compensation exception, even if there is a primary business purpose for the golf event. It should be noted, however, the hospital CEO or other administrative personnel, including senior management, are not barred from paying for social events such as meals or golf for physicians and the physician's immediate family members who are personal friends. The CEO or other administrative person may not submit the expenditure for reimbursement from the hospital or Tenet and may not claim the expenditure as an unreimbursed business expense on their personal tax return. Tenet does not expect or encourage this activity as a way of avoiding the limitations otherwise set forth in the Business Courtesies policy, and the administrative team and senior management should avoid the appearance of impropriety in this type of personal entertainment. Tenet anticipates that such events would be infrequent and reciprocal.

5. **Question:** (i) Can physicians attend the hospital's annual holiday party? (ii) Can the hospital host a holiday event for a portion of its medical staff, such as only active medical staff members? (iii) Can the hospital provide gifts or favors to the attendees of its annual holiday party? (iv) Can the annual appreciation event include activities such as golf or spa services in addition to a meal?

Answer: (i) Yes. The Stark III regulations expressly permit the hospital to host one medical staff appreciation event each year, such as an holiday party, for the entire medical staff. Except as discussed in (ii) below, the annual medical staff appreciation event is not required to be reflected on the attendees' non- monetary compensation log.

Answer: (ii) If the hospital elects to host an event for a portion of its medical staff, it will be considered a benefit that must be included on the non-monetary compensation log. The pro rata cost of the event will constitute "remuneration" subject to the \$300 cap under the non-monetary compensation exception for each physician and his/her spouse who attend the event. To calculate the pro rata cost of the party, the hospital shall divide the total cost of the party divided by the number of invitees or, if applicable, anticipated attendees following RSVP replies. This applies whether the party is for the hospital's employees and their spouses and where all the physicians on the hospital's medical staff and their spouses are invited or if the party is hosted by the hospital solely for a portion of the medical staff. The amount expended on a per physician basis must be reasonable in amount as judged by local standards. Finally, the hospital may not pay for a physician's practice holiday party or host a holiday party for a select group of the medical staff.

Answer: (iii) If the hospital provides gifts to the attendees of the party such as favors or door prizes, these gifts are considered remuneration which must be included on the non-monetary compensation log and is subject to the \$300 cap.

Answer: (iv) The annual medical staff appreciation event is not limited to a holiday party, meal or cocktail event. The event may include activities for the attendees, such as golfing or spa services.

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6. **Question:** How are the costs associated with Governing Board retreats as well as meals at monthly Governing Board meetings handled?

Answer: Meals, lodging, travel and leisure expenses for Governing Board retreats and meals served at Governing Board meetings can meet the Stark personal services or fair market value exceptions, provided the physician governing board member signs a letter agreement as set forth in the contractual arrangement manual. This means the value of the above benefits will not constitute “remuneration” and need not be tracked for purposes of the \$300 cap under the non-monetary compensation exception.

7. **Question:** Can hospitals provide professional courtesy discounts to members of their medical staff and their immediate family members?

Answer: Yes. CMS has created a new regulatory exception under the Stark II Phase II regulations for professional courtesy discounts provided certain requirements are met. Tenet has developed a separate policy which permits hospitals to offer professional courtesy discounts to members of their medical staff, the physician’s immediate family members and to other physicians in the hospital’s service area. This updates the previous directive issued in April, 2003 wherein the Law Department advised the hospitals they were to cease offering professional courtesy discounts to physician members of its medical staffs and their immediate family members until further guidance was issued by CMS. This policy change was effective and applied to any new inpatient admission or outpatient procedure performed on or after April 25, 2003. Further, hospitals may continue to offer courtesy discounts to non-physician Governing Board members in accordance with the policy, unless there is a federal or state law to the contrary. Please refer to the Professional Courtesy Discount policy for additional guidance.

8. **Question:** Can a hospital provide without compensation a service to transcribe a physician’s dictation for the hospital’s medical records?

Answer: Yes. This only applies to services used to transcribe a physician’s dictation for inclusion into the hospital’s medical records and not for the physician’s private practice. It is CMS’s position that this can meet the medical staff incidental benefits exception set forth above.

9. **Question:** Can a hospital sponsor a CME seminar when it is open to all physicians on the hospital’s medical staff?

Answer: The Stark II Phase II regulations and its preamble suggest physicians financially benefit from the provision of an on or off-campus CME seminar and consequently the CME seminar constitutes remuneration under Stark. However, if the CME seminar is held on-campus and provided all the requirements under the medical staff incidental benefits exception are met, then the hospital may sponsor the CME seminar. It should be noted that in order to meet the medical staff incidental benefits exception for an on-campus CME seminar, the value of the seminar cannot exceed \$25 per occurrence, adjusted annually for inflation.

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If the CME seminar is held off-campus, then the medical staff incidental benefits exception does not apply because this exception only applies to items and services provided on-campus with limited exceptions. However, the non-monetary compensation exception may apply provided the aggregate value of the items or services provided to each physician does not exceed \$300 per year per physician. If the hospital sponsors an off-site CME seminar, then the hospital needs to (i) determine a fair market value for a physician's attendance at the event, and (ii) keep a log and count the value of the seminar towards the \$300 cap under the non-monetary compensation exception.

Notwithstanding the location, if the seminar is for **compliance** training (e.g., establishing policies and procedures, training of staff, internal monitoring, reporting) or specific training regarding the requirements of Federal health care programs (for example, billing, coding, reasonable and necessary services, documentation, unlawful referral arrangements), then the hospital can sponsor the seminar and there is no remuneration attributed to the physician under the compliance training exception. The compliance training exception requires the training to be held in the local community or service area. It should also be noted that it appears that compliance training for which CME credit is offered is excepted only if compliance training is the predominant purpose.

10. **Question:** If a physician is on more than one of Tenet's affiliated hospital's medical staff, does the \$300 cap under the non-monetary compensation exception apply to each hospital or must the benefits provided by each hospital be aggregated for purposes of the \$300 cap under the non-monetary compensation exception?

Answer: Provided the hospitals bill under separate provider numbers, are licensed separately and receive payment directly from CMS for hospital services rendered, then the benefits provided by two or more of Tenet's affiliated hospitals do not need to be aggregated for purposes of calculating the \$300 cap under the non-monetary compensation exception, as each hospital is a separate designated health service entity.

11. **Question:** Can the hospital provide flowers or other gifts to physician members of their medical staff or their immediate family members when they are hospitalized or to recognize a special event, such as a birthday?

Answer: Yes. However, the cost of flowers or other gifts provided to physician members or their immediate family members in the above settings are subject to the \$300 cap under the non-monetary compensation exception.

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12. **Question:** Over what period of time does the hospital calculate the \$300 cap under the non-monetary compensation exception?

Answer: The \$300 cap is calculated on an annual basis, whether on a fiscal or calendar year. If the hospital has been using a fiscal year, such as June 1 to May 31, to track the noncash gifts, then it may continue to use this same time period. If it desires to change to a calendar year to be in accordance with Tenet's calendar year, then it should track the noncash gifts from June 1 through December 31. The \$300 cap will need to be prorated for the short period year, so that the cap is limited to \$175 ($\$300 \times (7/12)$). If the hospital has been using a calendar year to track noncash gifts, then it should continue to use the calendar year for this purpose.

13. **Question:** How are prizes and gifts given on Doctor's Day or other special events treated?

Answer: Prizes and gifts given on Doctor's Day or other special events are subject to the \$300 cap under the non-monetary compensation exception. It should be noted that cash and cash equivalents, such as gift certificates, are strictly prohibited.

14. **Question:** Can a hospital pay for a consultant to educate a Medical Executive Committee in preparation for the hospital's Joint Commission survey?

Answer: Yes. Paying a consultant to educate the Medical Executive Committee in preparation for a Joint Commission survey is for the benefit of the hospital, not the physician. Thus, the amount paid to the consultant would not be considered as compensation to the physician and is thus not subject to the \$300 cap under the non-monetary compensation exception.

15. **Question:** Can a hospital host a luncheon on its campus for physician office staff to educate them on available hospital services, obtaining diagnostic results for their physician's patients, HIPAA, etc.?

Answer: Yes. Provided the meal is modest as judged by local standards, the first two situations described in this question are educational in nature, do not directly involve a physician, and are not the financial responsibility of the physician. Thus, the hospital would not log the cost of the luncheon against the non-monetary compensation exception unless the physician was present, in which case a pro rata allocation of the cost of the luncheon would be allocated to the physician. The luncheon for HIPAA training would meet the compliance exception under Stark and would not be subject to the \$300 cap under the non-monetary compensation exception.

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16. **Question:** Can a hospital host a meal on its campus (i) for a local IPA/medical group to conduct their own business or (ii) to conduct business with the hospital?

Answer: (i) The hospital should not host a meal on its campus without compensation for a local IPA/medical group in order for the IPA/group to conduct its own business. If the hospital did host a meal in this case, then the cost of the meal and a fair market rental charge for the use of the premises would need to be charged to the IPA/group for this event. (ii) If the purpose of hosting the meeting is to conduct business with the hospital, then the cost of the meal would be counted towards the \$300 cap under the non-monetary compensation exception.

17. **Question:** (i) Can a hospital invite a non-governing board member physician to an off-site Governing Board meeting where the physician will be honored and presented with a gift due to his announced retirement in the near future? (ii) Can a hospital provide holiday gifts to Governing Board Members and the Chief of Staff in recognition of their service to the hospital and community?

Answer: (i) Yes. The hospital may invite the physician to the board meeting and provide a meal to the physician and not count the value of the meal towards the \$300 cap under the non-monetary compensation exception. However, if a gift with independent value (such as a watch or piece of crystal but excluding a plaque) is given to the physician then the value of the gift will count towards the \$300 cap under the non-monetary compensation exception.

Answer: (ii) Yes. However, holiday gifts given to physician Governing Board Members and the Chief of Staff will count towards the \$300 cap under the non-monetary compensation exception. The comments to the Stark II Phase II non-monetary compensation exception specifically state “an entity can give a physician one noncash gift per year valued up to \$300 or two or more gifts per year, as long as the annual aggregate value of the gifts does not exceed \$300.” Thus, it appears holiday gifts are exactly what CMS intended to be covered by the non-monetary compensation exception.

18. **Question:** Is the \$300 limit under the non-monetary compensation exception and the \$25 limit under the medical staff incidental benefit exception indexed for inflation?

Answer: Yes. The \$300 limit for non-monetary compensation and the \$25 limit for medical staff incidental benefits will be adjusted annually for inflation to the nearest whole dollar effective January 1 of each year using the increase in the Consumer Price Index-Urban All Items CPI-U) for the 12-month period ends the previous September 30. CMS will display both the increase in the CPI-U and the new limits on the physician self-referral Web site at <http://cms.hhs.gov/medlearn/refphys.asp>

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19. **Question:** Can a Tenet hospital invite a physician to attend a charitable event sponsored by a tax-exempt 501(c)(3) organization without counting the value of the event towards the \$300 cap under the non-monetary compensation exception? For instance, if a hospital purchases a table with 10 seats for \$1,000 at a Red Cross fund raiser and the Red Cross provides documentation that the value of the charitable contribution is \$800, then how much, if any, is counted against the \$300 cap?

Answer: Yes. A Tenet hospital may invite a physician to attend a charity event sponsored by a 501(c)(3) organization but will have to count a portion of the cost of the event towards the \$300 cap. In the above example, each ticket costs \$100 and \$80 is the documented value of the charitable contribution as determined by the sponsoring organization. This means the hospital would have to count \$20 (\$100-\$80) against the \$300 cap.

20. **Question:** If a meal is provided to a physician's office staff to talk about existing service issues or new services at the hospital, does the full amount of the cost count towards the \$300 limit under the non-monetary compensation exception or just the fraction based on the number of doctors who attend the meeting?

Answer: The provision of a meal to a physician's office staff to educate the staff on service issues or new services at the hospital constitute marketing/education expenses and are not treated as remuneration under the non-monetary compensation exception. However, if a physician attends the lunch then a pro rata portion of the meal cost needs to be allocated to the physician and counted and tracked against the \$300 limit under the non-monetary compensation exception. For example, if a total of 8 people were present, one of which was a physician, and the cost of the meal was \$80, then \$10 would need to be counted and tracked against the \$300 limit. This assumes there is a legitimate business purpose for the meal and is not a "dine and dash" situation.

21. **Question:** Can a Tenet hospital send a holiday fruit basket or box of cookies to a physician's office as a holiday gift?

Answer: Yes. A Tenet hospital may provide a holiday gift to a physician's office. However, all or a portion of the cost will need to be allocated to the physician(s) and counted and tracked against the \$300 limit under the non-monetary compensation exception. If the fruit basket or box of cookies costs \$70 and the office consists of two physicians and five office staff and the gift is to be shared by all personnel in the physician's office, then each physician would be allocated \$10 (\$70/7) and this amount would need to be counted and tracked against the \$300 limit. If the gift was solely for the benefit of a physician, then the total costs would be allocated to that physician and tracked and counted against the \$300 limit.

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22. **Question:** The hospital forms a physician advisory committee (“PAC”) consisting of the CEO and ten physician members of the medical staff. The PAC meets once a quarter and discusses legitimate issues facing the hospital. The PAC meets at a local restaurant that is conducive for a meeting. Is the cost of the meal subject to the \$300 cap under the non-monetary compensation exception?

Answer: Maybe. As discussed above, Tenet considers the cost of a meal as constituting “remuneration” subject to the \$300 cap, adjusted annually for inflation, under the non-monetary compensation exception even if there is a primary business purpose for the meal. Notwithstanding, a hospital may furnish and pay for a meal pursuant to a personal services agreement (e.g., a consulting or services agreement) that provides for it, to discuss issues relating to the physician’s duties under the agreement, provided the meal is modest as judged by local standards and occurs in a venue conducive to conducting a meeting. A meal in this instance can meet the Stark personal services or fair market value exceptions, provided the physician PAC member(s) signs a letter agreement that meets either the personal services or fair market value exception requirements. It is recommended the Tenet hospital prepare an agenda for each meeting and keep minutes of the meeting. Further, a physician’s spouse should not attend the meeting.

23. **Question:** Can a hospital provide vaccinations (including Influenza, DPT, Varicella and Hepatitis B vaccinations) to physicians?

Answer: Yes, subject to the limitation below.

Immunizations Mandated by Accrediting and/or Licensing Agencies.

If a hospital is required by an accrediting or licensing agency to have physicians (or all physicians of a particular specialty) on its medical staff receive a vaccination as a condition of treating patients at the hospital, Tenet will not consider the cost of the vaccine as “remuneration” that would otherwise require the hospital to meet either (i) the medical staff incidental benefits exception, (ii) track the cost against the \$300 non-monetary compensation limit.

Vaccines below \$25 (adjusted annually for inflation).

Vaccines that cost below \$25 may be provided in the hospital under the medical staff incidental benefits exception if the vaccinations are (i) provided by a hospital to all members of the medical staff practicing in the same specialty (but does not have to be accepted by every member to whom it is offered) without regard to the volume or value of referral or other business generated between the parties, (ii) offered during periods when physicians are making rounds or are engaged in other services or activities that benefit the hospital and its patients, (iii) provided by the hospital on the hospital’s campus, (iv) reasonably related to the provision of, or designed to facilitate directly or indirectly the delivery of, medical services at the hospital, and (v) less than \$25 with respect to each occurrence of the benefit.

Vaccines above \$25 (adjusted annually for inflation).

A hospital may provide immunizations to physicians if the cost of the vaccine is above \$25 but the cost shall be tracked and counted against the \$300 cap under the non-monetary compensation exception.

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24. **Question:** What should a Tenet hospital do if it accidentally exceeds either the \$300 limit under the non- monetary compensation exception or the \$25 limit under the medical staff incidental benefits exception for a particular physician in a given year?

Answer: The matter would need to be reported on the Tenet hospital's monthly compliance report and the Tenet hospital's compliance officer and regional counsel would need to undertake appropriate review to determine what actions would need to be taken to comply with the Stark II requirements. At a minimum, the hospital should seek reimbursement from the physician for any amount paid in excess of the \$300 or \$25 limits, respectively. Further, a bill hold will likely be imposed for all Medicare claims for designated health services furnished from the time the hospital exceeded the respective \$300/\$25 limits until the time the physician reimburses the hospital for the excess amount. Effective December 4, 2007, the hospital may ultimately bill for the physician's referred designated health services after receipt of repayment if (i) the total amount of the overpayment is less than 50% of the total annual limitation on non-monetary compensation (i.e., total gifts less than \$450 if the annual cap is \$300), (ii) repayment is made within the earlier of 180 days after the excess remuneration was received or the end of the calendar year in which it was received and (iii) the hospital has not cured a prior overpayment to the same physician in this manner within the last 3 year. In addition, the facts giving rise to the situation would need to be reviewed so that it could be determined how the error occurred and appropriate corrective procedures implemented to prevent any subsequent occurrences.

25. **Question:** Does the nonmonetary compensation limitation apply to residents and fellows?

Answer: Yes, if the residents and fellows are not directly employed by the hospital nonmonetary compensation provided to residents and fellows should be tracked on the log and is subject to the same annual limitation as is applicable to other members of the medical staff. Nonmonetary compensation provided by the hospital to its employed residents and fellows is not subject to tracking but is considered to be remuneration related to the employment relationship.

26. **Question:** Should the hospital log nonmonetary compensation provided to physicians who are not members of the medical staff at the hospital?

Answer: Yes. Any nonmonetary compensation received by the physician during the year must be counted against the annual limitation for purposes of determining whether the physician's referrals are exempted from the Stark Law referral prohibitions, whether or not he was a member of the medical staff when it was received.

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27. **Question:** If a physician owes money to the hospital and the hospital has been unsuccessful in its efforts to collect this debt, can it be forgiven and added to the nonmonetary compensation log?

Answer: It is not permissible for the hospital to excuse receivables from a physician, even if the amount payable would be added to the nonmonetary compensation log. Only items and services may be received and recorded on the log. Cash and cash equivalents are not eligible for this treatment. Physician receivables should be pursued through the Law Department and any settlement or forgiveness should be approved by Regional Counsel or collection counsel.

28. **Question:** May the hospital provide free ACLS or BCLS training to physicians?

Answer: Maybe. Tenet considers the cost of ACLS or BCLS training to be remuneration subject to the \$300 cap on nonmonetary compensation. Notwithstanding, if the physician is obligated pursuant to a written agreement to perform clinical duties including ACLS and/or BCLS activities (such as emergency department or critical care services), the hospital may include this training as part of the compensation paid to the physician for his services. In that event, the cost would not be deemed nonmonetary compensation. Otherwise, the hospital should charge the physicians for this training at a rate consistent with fair market value. The arrangement should be memorialized in a letter agreement which has been approved in eCATS.

29. **Question:** Is the hospital required to add the costs of tax, gratuity, delivery and other similar charges to the amount allocated to a physician's non-monetary compensation log?

Answer: Yes. Unless otherwise approved by Regional Counsel, all costs (including tax, gratuity, delivery and other similar charges) associated with the non-monetary compensation benefit provided to the physician shall constitute "remuneration" subject to the \$300 cap.

30. **Question:** Is the hospital required to maintain a non-monetary compensation log for a physician who receives a non-monetary compensation benefit that would otherwise require being added to the non-monetary compensation log if the physician at the time of the receipt of the benefit is not then a member of the medical staff?

Answer: Generally, yes. If a physician who is not on the hospital's medical staff receives a benefit that would be logged if the physician was a member of the medical staff, the hospital is required to add the physician to the non-monetary compensation log for the year as if he/she is a member and subject to the same limitations. Notwithstanding, if between the provision of the benefit through the end of the next calendar year the physician could not reasonably be expected to be a source of referrals to the hospital or influence or recommend the purchasing, leasing ordering or arranging for any goods, facility, item or services paid for, in whole or in part, by a federal healthcare program (e.g. out-of-state physician guest speaker for the hospital) the facility will not be required to add the physician to the non-monetary compensation log.

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Policy L-1 Application to Tenet Physician Resources (TPR)

(TPR personnel should also review the foregoing FAQs as instructive to overall implementation)

1. **Question:** How does Law Department Policy L-1 Business Courtesies to Physicians and Immediate Family Members, apply to TPR and its practices?

Answer: Law Department Policy L-1 was developed to facilitate compliance with the Stark requirement prohibiting Tenet from providing Non-Monetary Compensation (NMC) to physicians and their immediate family members if the compensation exceeds an annual limit established by CMS. This policy applies enterprise-wide, including entities that employ physicians even though very few TPR practices provide designated health services such as laboratory, x-ray or other ancillary services that trigger the application of the legal requirement. To simplify compliance with Law Department Policy L-1, TPR will maintain one centralized log (the TPR Log) for NMC provided to in-market physicians not employed by a TPR entity and their immediate family members. The TPR Vice-President of Operations will maintain the TPR Log. Any TPR personnel seeking to expend TPR resources on in-market physicians not employed by a TPR entity (including their immediate family members) shall consult the TPR Log in advance to ensure the limit has not been met. Following the expenditure, TPR personnel shall submit to the TPR Vice-President of Operations a completed "TPR Non-Monetary Compensation Log Entry Form" within five (5) days of filing the expense report including such NMC expenditure and said expenditure shall be logged as soon as possible. The TPR log will be reported on during the Physician Practice Compliance Committee meeting. Upon availability, TPR will transition to an electronic system to track the expenditures.

2. **Question:** May a Tenet hospital or Regional/Market personnel take a physician employed by a TPR entity to dinner and pay for it in order to discuss operating room start times?

Answer: Yes, but because the hospital is not the employer of the physician, the cost of the physician's meal is compensation to the physician and must fit within the Stark NMC exception. If the hospital/Regional/Market personnel pays for the meal, the share of the cost of the meal for the physician employed by the TPR entity shall be logged for the physician on the hospital log to ensure the annual NMC limit has not been exceeded for the physician. The meal must be for an appropriate business purpose and must be reasonable in cost and setting.

3. **Question:** May TPR and/or practice personnel from the TPR entity that employs the physician take the employed physician to dinner to discuss issues relating to the employed physician's duties under his/her physician employment agreement or other written agreement, or practice operations?

Answer: Yes, and because the meal is between employer and employee to discuss the physician's employment, it is not considered compensation to the employed physician and is not required by Tenet Policy to be logged on the TPR Log. The cost and setting of the meal must be reasonable and assuming the meal constitutes a reimbursable business expense pursuant to Tenet policy, the meal may be submitted as a business expense for reimbursement.

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4. **Question:** May TPR personnel take a physician employed by a TPR entity and her husband to dinner to discuss the operations of her practice?

Answer: Yes, but because the physician's husband is an immediate family member of the physician, the husband is considered a physician and the cost of his meal must fit within the Stark NMC exception and shall be included on the TPR Log. The meal must be reasonable in cost and setting.

5. **Question:** May TPR personnel (i.e., TPR Director of Business Development) meet with an in-market physician who is not employed by a TPR entity about possible employment with TPR and buy dinner?

Answer: Yes, but because the physician is not an employee, the cost of the physician's meal is compensation to the physician and must fit within the Stark NMC exception and the expenditure shall be logged for the physician on the TPR Log. The meal must be reasonable in cost and setting. Additionally, all discussions regarding potential employment shall be in compliance with Tenet Law Department policies and accordingly shall be without regard to the volume or value of any potential referrals to a Tenet facility.

6. **Question:** May TPR personnel and hospital/Region/Market personnel meet with in-market non-Tenet employed physicians over a meal to discuss potential employment?

Answer: Yes, but because the physician is not employed, the cost of the physician's meal is compensation to the physician and must fit within the Stark NMC exception. Either the TPR personnel or hospital/Region/Market personnel may expense the physician's portion of the meal. Whoever pays must place the expenditure on their log. Additionally, all discussions regarding potential employment shall be in compliance with Tenet Law Department policies and accordingly shall be without regard to the volume or value of any potential referrals to a Tenet facility.

7. **Question:** May TPR personnel and hospital/Region/Market personnel meet with in-market physicians who are not employed by a TPR entity over a meal to discuss something other than potential employment?

Answer: Contact your Operations Counsel in advance for guidance on what will be discussed and, if the meal is appropriate, how to log the physician's portion of the meal.