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I. SCOPE:


This policy applies to (1) Tenet Healthcare Corporation and its wholly-owned subsidiaries and affiliates (each, an “Affiliate”); (2) any other entity or organization in which Tenet Healthcare Corporation or an Affiliate owns a direct or indirect equity interest of 50% or more, and (3) any hospital or healthcare facility in which Tenet Healthcare Corporation or an Affiliate either manages or controls the day-to-day operations of the facility (each a “Tenet Facility”) (collectively, “Tenet”).

II. PURPOSE:

The purpose of this policy is to ensure that any Free or Discounted Goods and Services (as defined below) offered to an individual by a Tenet Facility are offered in accordance with the Federal health care program anti-kickback law (“Anti-Kickback Law”), 42 U.S.C. § 1320a-7b (b), the federal health care program beneficiary inducement law (“Beneficiary Inducement Law”), 42 U.S.C. § 1320a-7a(a)(5), and all applicable state laws. This policy defines the circumstances under which personnel acting on behalf of a Tenet Facility may offer items, services, or other benefits to an individual for free or less than fair market value.


III. DEFINITIONS:

- A. “**Free or Discounted Goods and Services**” include free promotional items, or free or discounted goods, services, or benefits.
- B. “**Exempt Items**” include:
1. an agreement with a third party payer not to balance bill its beneficiaries for services covered by the third-party payer;
 2. waiver or reduction of copayment and/or deductible offered in accordance with [Regulatory Compliance Policy COMP-RCC 4.02 Waivers of Co-Payments or Deductibles](#);
 3. waiver or reduction of charges, coinsurance, and/or deductible offered in accordance with [Law Department Policy L-6 Hospital Medicare or Medicaid Inpatient Assistance](#);
 4. waiver or reduction in charges offered in accordance with Tenet’s “Compact With The Uninsured;”
 5. Tenet Facility tours;

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6. hotlines, classes, or information sessions which (a) focus on health-care or wellness topics, (b) are held on the Tenet Facility’s premises, (c) are offered and advertised to the general public, (d) are not limited or offered on discriminatory terms to those receiving care from the Tenet Facility, and (e) are offered in compliance with [Regulatory Compliance Policy COMP-RCC 4.26 Marketing, Advertising and Community Events With Physicians](#);
 7. complimentary local transportation furnished in compliance with [Law Department Policy L-7 Complimentary Local Transportation](#); and
 8. Qualified Preventative Care Incentives, as defined by this policy.
- C. **“Cash Equivalent”** means, for the purposes of this policy, an item that can be readily converted to cash. Examples of Cash Equivalents include gift cards or certificates such as American Express certificates, checks, money orders, negotiable instruments, stock, traveler’s checks, honoraria and other similar items. The following are not cash equivalents because their use is limited to certain items: gas cards, gift cards for grocery stores, restaurants or other stores or certificates for items in the facility cafeteria.
- D. **“Qualified Preventive Care Incentives”** mean, for the purposes of this policy, any of the following:
- Free or discounted prenatal services or post-natal well-baby services that are covered by Medicare or Medicaid;
 - Free or discounted goods or services offered to expectant parent(s) when (and only when) the expectant parent(s) are receiving or have completed a prenatal service or post-natal well baby visit; and
 - Free or discounted health care goods and services which are listed in the current edition of the Guide to Clinical Preventive Services published by the U.S. Preventive Services Task Force.¹ The service must be listed and classified in the Guide as an “A” or “B” recommendation; otherwise, prior approval must be granted by Senior Director, Operations Marketing and the Regulatory Group of the Law Department.

¹ The Guide to Clinical Preventive Services published by the U.S. Preventive Services Task Force can be found at the following web address: <http://www.ahrq.gov/clinic/uspstfix.htm>.

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IV. POLICY:

The Anti-Kickback Law and Beneficiary Inducement Law generally prohibit a health care provider or supplier from offering or furnishing remuneration to beneficiaries of a federal health care program to induce them to obtain covered goods and services from a particular provider of health care services. Most states also have statutes that generally mirror the prohibitions in the federal law and apply to all patients.


With the exception of the Exempt Items defined in Section III. and any other exception specifically referenced in this policy, a Tenet Facility may only offer an individual Free or Discounted Goods and Services that meet all of the following requirements:

- A. The Free or Discounted Goods and Services are not cash or a cash equivalent;
- B. The retail value of the Free or Discounted Goods and Services are ten dollars (\$10) or less individually;
- C. The retail value of the Free or Discounted Goods and Services – in combination with all other Free or Discounted Goods and Services furnished to the individual by the Tenet Facility during the calendar year – aggregate to a retail value not exceeding fifty dollars (\$50);
- D. Free or Discounted Goods and Services may not be offered on preferable terms to patients of specific physicians, but rather must be made available on equivalent terms irrespective of the identity of the physician(s) treating the individual; and
- E. Unless specifically permitted by the relevant payer, a Tenet Facility shall not seek reimbursement for the Tenet Facility’s cost of providing Free or Discounted Goods and Services.

V. PROCEDURE:

- A. Application to Specific Programs
 - 1. Application of General Rule to Qualified Preventive Care Incentives

The restrictions described in Section IV. of this policy do not apply to Free or Discounted Goods and Services which take the form of Qualified Preventive Care Incentives.

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Such incentives may not be in the form of cash or cash equivalents and may not be disproportionate to the value of the preventative care provided. Qualified Preventive Care Incentives must not be conditioned on receipt of additional services from a Tenet Facility.

The Tenet Facility may not refer a patient to a physician or facility for follow-up care; rather, the Tenet Facility should have the patient contact his or her primary care physician, if appropriate. If the patient has no assigned physician, the Tenet Facility shall refer the patient in accordance with Tenet policy on a rotating basis among physicians with appropriate specialties.

2. Application of General Rule to Senior Care Programs

The incentives offered through Tenet’s Senior Care Programs must – in order to ensure compliance with applicable law– be furnished in accordance with this policy. Any Senior Care Program that does not follow these guidelines must be approved by Director, Operations Marketing and the Regulatory Group of the Law Department.

- a. Preventive Care. Free or discounted preventive services or incentives to receive such preventive services must be offered in compliance with the requirements in Section V.A.1. of this policy.
- b. Discounts of Hospital Goods and Services (i.e., cafeteria discounts). A Tenet Facility may provide refreshments, local transportation services (compliant with applicable policy), and limited cafeteria discounts to Senior Care patients in accordance with the requirements in Section IV. of this policy.
- c. Discounts with Local Vendors. Discounts arranged by the Tenet Facility with local vendors, such as florists, hotels, motels, movie tickets, etc., for Senior Care patients likewise may be offered only in accordance with the requirements in Section IV. of this policy (unless the vendor offers such discounts to all seniors in the community).
- d. Prescription Discounts. Discounts at a Tenet Facility’s outpatient retail pharmacy (i.e., charges below the rate generally charged to all customers) must meet the requirements in Section IV. of this policy (as well as any otherwise applicable state or federal law or payer requirements). Discounts that a Tenet Facility arranges for Senior Care participants at unaffiliated local pharmacies (unless the vendor

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offers such discounts to all seniors in the community) must also meet the requirements of Section IV of this policy. Discounts for drugs for inpatients may not be advertised and are subject to Tenet’s Hospital Medicare and/or Medicaid Inpatient Assistance policies.

- e. Discounts With Local Health Care Providers. Discounts offered through a Senior Care program or other targeted program with a local health care provider who is authorized to bill to a government health care program, may only be offered if the discount is nominal, or if the provider’s discount otherwise meets a statutory or regulatory exception or is the subject of a favorable advisory opinion, and the discount is offered to all similarly situated patients, not just the Tenet Facility’s patients. For example, a home health care provider offers to provide hospital patients a 10% discount on all fees. Unless the discount is nominal, the offered discount must meet a statutory or regulatory exception and must be offered by the home health care provider to all similarly situated patients, not just the hospital’s patients.

3. Application of Guidance to Service Recovery Programs

Tenet Facilities may offer gift cards and gift certificates for service recovery purposes, as long as the following guidelines are met:

- a. The retail value of the gift card/certificate does not exceed \$10 (or \$50 in the annual aggregate);
- b. The gift card/certificate is not redeemable for cash;
- c. The gift card/certificate is not redeemable for items or services provided by the hospital (except for cafeteria vouchers);
- d. The gift card/certificate is not redeemable for medical items or services;
- e. The gift card/certificate is redeemable for items or services from specific local vendors; and
- f. The gift card/certificate is not advertised.

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B. Tracking

With the exception of Exempt Items, Qualified Preventative Care Incentives, and nominal facility-logo marketing giveaways (e.g.—pens, mugs, etc), each Tenet Facility must track all free or discounted goods and services given to individuals by the Tenet Facility to ensure that the aggregate value of free or discounted goods and services given to any one individual does not exceed \$50 during any calendar year. Tracking documentation must be available for review, as needed.

C. Marketing and Advertising Review Service (“MARS”)


Any promotional materials referencing a Free or Discounted Good or Service offered under this policy must be approved through Tenet’s MARS process prior to dissemination. It is strongly suggested that proposals be submitted for review of compliance with this policy prior to expenditure of funds and efforts developing related promotional materials.

D. Enforcement

All employees whose responsibilities are affected by this policy are expected to be familiar with the basic procedures and responsibilities created by this policy. Failure to comply with this policy will be subject to appropriate disciplinary action pursuant to all applicable policies and procedures, up to and including termination. Such disciplinary action may also include modification of compensation, including any merit or discretionary compensation awards.

VI. REFERENCES:

- Anti-Kickback Law: 42 U.S.C. § 1320a-7b(b); 42 C.F.R. § 1001.952
- Beneficiary Inducement Law: 42 U.S.C. § 1320a-7a(a)(5); 42 C.F.R. §§ 1003.101, 1003.102(c)(13).
- [OIG Special Advisory Bulletin, Offering Gifts and Other Inducements to Beneficiaries \(August 2002\)](#)
- [OIG Compliance Guidance for Hospitals \(February 1998\)](#)
- [OIG Supplemental Compliance Guidance for Hospitals \(January 2005\)](#)
- OIG Advisory Opinions [02-12 \(August 2002\)](#); [02-14 \(October 2002\)](#); [03-4 \(February 2003\)](#); [08-07 \(July 2008\)](#)

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- [Regulatory Compliance Policy COMP-RCC 4.02 Waivers of Co-Payments or Deductibles](#)

- [Regulatory Compliance Policy COMP-RCC 4.26 Marketing, Advertising and Community Events With Physicians](#)

- [Law Department Policy L-6 Hospital Medicare or Medicaid Inpatient Assistance](#)
[Law Department Policy L-7 Complimentary Local Transportation](#)