



IMPORTANT NOTICE REGARDING NON-COMPLIANCE INDUCEMENTS

Background and regulations:

Business and Professions Code (B&PC) section 650 states in part that the: ***“ . . .offer, delivery, receipt, or acceptance by any person licensed under this division of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration . . . as . . . compensation or inducement for referring patients . . . to any person . . . is unlawful.”***

Violation of the above is punishable by imprisonment, a fine of up to \$50,000, or both. This law applies to referrals by physicians, dentists, nurses, and other health professionals, including chiropractors. The intent of the law is to protect the public from excessive health care costs, from referrals based on considerations other than the best interests of the patients, deceit and fraud, and payment to a licensee where professional services have not been rendered.

Possible scenarios:

1. A laboratory places phlebotomy personnel in a physician's office. These personnel are either employed by the laboratory or contracted by the laboratory directly or indirectly through a third party. In this scenario, the phlebotomy services are offered solely to the physician's patients and are not available to the public, and the laboratory may or may not pay fair market value to the physician to lease the space occupied by the phlebotomist.

This is considered an unlawful inducement, regardless of whether the laboratory is paying fair market value to the physician for the leased space. In exchange for access to phlebotomy services at zero or reduced cost, the physician refers all of the physician's patients to the laboratory; the services are provided solely to the physician's patients and not to the general public. If the laboratory is not paying fair market value to lease the space occupied by the phlebotomist, this is further evidence of an unlawful inducement violation.

2. A laboratory pays an employee of a physician as an “independent” phlebotomist to collect specimens for the physician's patients.

After the issuance of the federal OIG Special Fraud Alert issued June 25, 2014, a laboratory has changed its practices and now enters into a contractual arrangement directly with an individual, who is a member of a physician's office staff, to provide phlebotomy services to the laboratory. The individual provides the phlebotomy services on-site in the physician's office. The individual remains an employee of the physician's office and simultaneously receives payments directly from the laboratory as an independent contractor to the laboratory. In some circumstances, the physician reduces the salary or compensation to that individual when such an arrangement is in place.

This appears to be an inducement, as the laboratory is conferring a benefit upon the physician by paying a portion of the compensation of the physician's employee. It is an inducement regardless of whether the laboratory is paying fair market value to the physician to lease the space utilized by the phlebotomist.

3. A laboratory places a "roaming phlebotomist" in a physician's office. This phlebotomist is either employed by the laboratory or contracted by the laboratory directly or indirectly through a third party. In this scenario, the phlebotomy services are offered solely to the physician's patients and are not available to the public, and the laboratory may or may not pay fair market value to lease the space occupied by the phlebotomist from the physician. Placement of a "roaming phlebotomist" is the same as placing a laboratory employed or contracted phlebotomist in a physician's office full time.

This is considered an unlawful inducement, regardless of whether the laboratory is paying fair market value to the physician for the leased space. In exchange for access to phlebotomy services at zero or reduced cost, the physician refers all of the physician's patients to the laboratory; the services provided by the "roaming phlebotomist" are offered solely to the physician's patients and are not available to the general public. If the laboratory is paying fair market value to lease the space occupied by the roaming phlebotomist, this is further evidence of an unlawful inducement violation.

Please note: The responses of LFS contained in this notice are not exhaustive positions on these and similar scenarios.

Laboratory Field Services (LFS) has received complaints of possible violations of BPC section 650. LFS reviewed the complaints and identified approximately 122 facilities for investigation. Between January and August 2017, LFS inspectors investigated these facilities and found five facilities to be out of compliance:

- In four physician offices, phlebotomists placed by a laboratory collected blood only for the physician's patients and did not offer services to the general public.
- In one physician office, a phlebotomist placed by a laboratory stated that the phlebotomy services were available to the public but there was no signage to indicate the availability of the service. In addition, the laboratory was not paying fair market rent to the physician office.

LFS issued statements of deficiencies to these physician offices and all five provided acceptable evidence of correction.