

## **Non-Monetary Compensation: FAQs**

---

### **Q1. What is Non-Monetary Compensation?**

Non-monetary compensation is the term the government uses for items and benefits that a health care provider like VUMC provides without charge or for less than fair market value to a physician outside of a contractual relationship like an employment or a lease. Examples of non-monetary compensation include gifts, meals, entertainment and continuing medical education credits. Under the Stark Anti-Referral Law, items or benefits given by health care providers as non-monetary compensation are subject to an annual financial limit which is adjusted each year for inflation. Compliance with the Stark law is very important. If VUMC provides a physician with benefits that exceed the limit, it cannot bill Medicare or Medicaid (TennCare) for services ordered by the physician. The new Policy on Benefits to Non-Employee Physicians, which takes effect on January 1, 2022, is designed to ensure neither VUMC nor its affiliated entities or hospitals exceed the annual limit.

### **Q.2 What is a kickback?**

A kickback is anything of value that is offered, paid, solicited, or received in exchange for an order or referral for Medicare or Medicaid (TennCare) business. The federal Anti-Kickback law makes it a felony to knowingly or willfully offer, pay, solicit or accept a kickback in return for ordering, referring, arranging, or purchasing any service or item that may be paid by Medicare or Medicaid.

### **Q.3 What is VUMC doing to ensure compliance with the Stark Anti-Referral Law and the federal Anti-Kickback Law?**

To ensure compliance with the Stark Law limits on non-monetary compensation, VUMC's Compliance and Corporate Integrity Committee (CCI) recently adopted a policy on Benefits Provided to Non-Employee Physicians. To ensure compliance with the Anti-Kickback law, CCI recently adopted Guidelines on Interactions with Community Physicians and Local Referral Sources. The Policy and the Guidelines take effect on January 1, 2022.

### **Q.4 Why is this a topic that is coming up now? Are there changes to our previous practice?**

It has long been VUMC's policy to comply with both the Stark law and the Anti-Kickback law. These important laws are covered in Annual Training and in VUMC's Code of Conduct.

The new Policy and Guidelines were adopted to respond to the growth in VUMC and changes in the way it interacts with the health care provider community. Until recently, physicians who worked at VUMC hospitals were almost exclusively VUMC employees. The acquisition of 3 regional hospitals with voluntary

(non-employed) medical staffs and the desire to build strong relationships with clinicians in new communities creates new risks under the Stark and Anti-Kickback laws.

**Q.5 What is the purpose of VUMC's Benefits to Non-Employee Physicians Policy?**

The purpose of the new policy is to ensure compliance with financial and regulatory limits placed on the provision of benefits to referring physicians by applicable federal law and regulation. The policy provides several important definitions and prohibits the provision of gifts or other benefits to Non-Employee Physicians that exceed limits established annually by the Centers for Medicare and Medicaid Services (CMS). It also requires everyone to report benefits provided to non-employee physicians using a new Redcap tool called NMT (Non-Monetary Compensation Tracker) so that they can be centrally tracked against the annual limit.

**Q.6 What is the CMS limit?**

The Center for Medicare and Medicaid Services (CMS) annually determines the limit on non-monetary compensation. For CY22, each entity may provide a physician it does not employ no more than \$452 per calendar year regardless of the reason the benefit was provided.

There are certain items that are not counted against this limit. These include some benefits provided by a hospital to a physician who is a member of the hospital member staff. To qualify as part of the Medical Staff Benefit Exception, the item or benefit must be: 1) valued at less than \$39 per occasion; 2) offered to all medical staff members practicing in the same specialty (or to all members of the medical staff); 3) reasonably related to provision of medical services at the hospital; and 4) for use on campus when engaged in activities that benefit the hospital or its patients (e.g., free parking, snacks in the lounge). Another item that does not count against the \$452 or \$39 limits is continuing medical education credit awarded for certain types of continuing professional education such as Grand Rounds, Morbidity and Mortality Conferences, Tumor Board, Journal Club and for compliance training.

**Q.7 What is the purpose of the VUMC Guidelines for Interacting with Community Clinicians and Other Potential Referral Sources?**

The purpose of the Guidelines is to ensure that professional and social engagements with external clinical colleagues comply with the federal Anti-Kickback law and conform to the highest ethical standards. The Guidelines provide more detailed information than the policy about the kinds of items and benefits that may be appropriate, including helpful and common examples. The Guidelines were written with the following considerations: 1) referral should be driven by patient needs, provider reputation, quality, and willingness to collaborate in meeting needs of patient; 2) sharing of experiences, entertainment, food and gifts with friends and colleagues should be encouraged and valued; and 3) VUMC clinicians and staff need to abide by federal limits on non-monetary compensation.

**Q.8 Who does the policy and guidelines apply to?**

Currently the policy and guidelines apply to the following entities and their employed clinicians and staff:

- VUMC
- VWCH
- Vanderbilt Tullahoma Harton Hospital
- Vanderbilt Bedford Hospital
- The following VUMC Affiliates:
  - New Light INMTng
  - One Hundred Oaks INMTng
  - Retail Health Clinics
  - Spring Hill INMTng Center
  - Vanderbilt-Gateway Cancer Center
  - Vanderbilt Health and Williamson Medical Center Clinics and Services
  - Vanderbilt Health Services
  - Vanderbilt Home Care Services
  - Vanderbilt INMTng Services
  - Vanderbilt-Maury Radiation Oncology
  - Williamson INMTng

**Q.9 When do the policy/guidelines apply?**

The policy/guidelines apply in all situations in which an entity listed above is the initial or ultimate source of funding for an item or activity, and when, regardless of funding source, any part of the purpose for funding an item or activity is to promote the services of VUMC, its affiliates, or individual clinicians.

**Q.10 When do the policy/guidelines not apply?**

The policy/guidelines do not apply when personal resources are expended (without reimbursement) to purchase gifts, meals, entertainment, etc. *solely* as part of a legitimate personal or social relationship. They also do not apply to a gesture undertaken without intent of generating or rewarding referrals (e.g., flowers to recognize the passing of a clinician or family member) that are paid for by an individual faculty member or staff member.

**Q.11a. Am I allowed to invite potential referral sources to a Charitable Event?**

It depends. Invitations funded by VUMC (or a VUMC regional hospital or affiliate listed in the response to Q.8 above) to a charitable event may be extended to potential referral sources when the intent of the invitation is to benefit a charitable cause and not to serve as practice development or referral generation activity. If the invitees are physicians who are potential referral sources or members of the physician's immediate family, then the Policy requires the value of the items provided to be reported in the NMT system where they will be tracked against the annual \$452 limit.

**Q. 11b. I want to go to a charity event and invite two colleagues who refer to me often because I know that they have a vested interest in the Charity's mission to prevent heart disease? I would like to pay for their tickets.**

It depends. If these are individuals with whom you have a personal relationship and you are inviting them because of their interest in the charity's mission, it would be appropriate to invite them and permissible to pay for their tickets. But if, for example, you chose them because they send you the most cases or to encourage them to send you more cases, then it would be problematic to pay for their tickets, even from your own personal funds.

**Q. 11c. What if everyone pays their own way?**

This is ok because there is no remuneration being provided to the referring physicians.

**Q. 11d. What about an alumni event where our department invites back former colleagues for an occasional reunion?** This is ok if the purpose of the event is to bring people back together, and not to induce or reward referrals. It would be expected that all alumni in good standing would be invited back and not just those from whom VUMC or its affiliates receives or hopes to receive clinical orders or referrals. However, to the extent that the invitees are actual or potential referral sources to VUMC, the value of the event needs to be tracked in NMT and will count towards the entity's annual limit.

**Q. 12a. May I invite two physicians who are not employed by VUMC to a sporting event, concert, or play?**

Complimentary tickets to non-charitable events (e.g., VIP Suites at Titans and Predators games, Vanderbilt football games, and Vanderbilt basketball games) may not be provided as practice development or referral generation activities. They would be permissible for other purposes such as donor development (e.g., tickets for a community physician who may contribute to a scholarship) or for other relationship building purposes that are not related to practice development or referral generation. Regardless of the purpose of the benefit provided, if VUMC or a VUMC affiliate funds the benefit, then the value of the benefit provided would need to be reported in the NMT system so that it may be tracked against the annual limit.

**Q. 12b. Last November I went to Titans' game with a friend from medical school who is now a cardiologist. My friend paid for the tickets. I want to repay his generosity by bringing him to a Predators' game. Is this ok?**

Yes, as long as the intent is not to generate referrals. It is completely acceptable for VUMC clinicians to interact socially with community clinicians with whom they have a personal relationship and, from time to time, as a gesture of friendship, cover the cost of these social interactions, just as they might do with other friends who are not involved in the provision of health care services and are not in a position to make referrals.

**Q. 12c. Can the department reimburse me for my tickets?**

No. This would not be appropriate because it is an invitation to a social event extended to a friend as a gesture of friendship. Also, if the invitation was motivated in part by the desire to cultivate or maintain a referral relationship it would not comply with the guidelines.

If a clinician uses their professional development account to pay for a non-monetary compensation given to a potential referral source, the same rules apply for reimbursement. If the gift is personal, the department cannot reimburse to clinician.

**Q. 13a. The Physician Outreach Group just facilitated a meeting to introduce some of our department's newest faculty to a few community practices, I would really like to thank the physicians who showed up and participated for their time and interest. May we do this?**

Yes. It is acceptable to provide gift baskets, flowers, or low cost VUMC branded items (mugs, pens) if they are of moderate cost and are provided for permissible purposes, such as thanking participants for attending an introductory meeting. It would not be permissible if the purpose was to induce or reward referrals.

**Q. 13b. VUMC is participating in a national conference. We have secured a booth in the convention center and plan to provide information to conference participants about VUMC's clinical capabilities and research. We would like to provide small Chapstick lip balm containers as a giveaway to conference participants. Is this permissible?**

It is permissible to give away small minimal value gifts to conference attendees while participating in conferences or presenting on behalf of VUMC. There is no need to report this type of gift in NMT because the value of the item is very small and provided to everyone. However, if you were to take a select group of conference attendees out to dinner at VUMC expense to provide them with more information about VUMC programs, you would need to report that in the NMT system.

**Q. 13c. A physician I have come to know through some committee work at the Nashville Academy of Medicine just had a baby. This physician sometimes sends cases to me. May I send her congratulatory flowers?**

It really depends. If you are doing this because you have developed a personal relationship with this physician and are sending the flowers as a gesture of friendship, this would be permitted. But because this is a personal gesture, it would be expected that you would pay for this from your own funds. On the other hand, if this is someone that you know only professionally and you are doing this because of the professional/clinical relationship and because of past and anticipated future referrals, then this would not be permitted, regardless of whether the flowers are paid for by you or by VUMC.

**Q. 13d. A VHS managed entity is contracted with VUMC clinicians to provide coverage. The VHS entity wants to give all these clinicians a sweatshirt. Is this ok considering these providers may be a referral source to the VHS managed entity?** This is ok because the gift is for everyone, it is of moderate cost and is incidental to a pre-existing personal services agreement. However, the gift amount would need to be reported in NMT to be tracked against the annual limit.

**Q. 14a. When would it be OK to take a potential referral source to dinner?**

It depends. This could be appropriate if you are planning to use the meal as a business meeting where you would discuss your clinical services with this colleague. The setting should be one that would be conducive to practice development purposes, in other words a quiet restaurant where you would be able to talk, not a venue with live music, or a sporting event. The frequency of these events would also have to be appropriate. Dining out is permitted if the meal is \$50 or less per guest. If this is a business meeting, it would not generally be expected that spouses or significant others would be expected to attend. Any spouses, significant others, or guests brought by the invitee cannot be covered by VUMC funds.

**Q. 14b. I want to take a potential referral source out to his favorite place to discuss practice development. His favorite place is a famous rooftop bar downtown. Is this ok?**

No, as this is not a setting “conducive to practice development purposes.”

**Q. 14c. What if we went to a Predators game and sat in a corporate box where we could discuss clinical services before the game and between periods when it is quiet and there is no action on the ice?**

While this setting would arguably be conducive to a business discussion, if the intent is to have a discussion that could lead to clinical referrals, then paying for a potential referral source to attend a Predators game or to any other type of sporting event or entertainment is not permitted under VUMC policy.

**Q. 15. Am I allowed to provide an office lunch for potential referral sources?**

Once again, it depends. This would be permitted when provided in connection with a presentation or meeting if the purpose is to furnish information about VUMC’s clinical services. The attendees should be appropriate to the business purpose of the meeting. Any meal provided should be modest by local standards and consumed during the presentation by the attendees. It would not, on the other had be permitted to simply send a catered lunch to clinicians or others from whom VUMC receives or expects to receive referrals.

**Q. 16a. Am I allowed to invite a potential referral source to Continuing Medical Education programs:**

Clinicians and staff may invite community clinicians to participate in CME programs that are organized, hosted, or sponsored by VUMC and that are generally offered to members of the VUMC community and the clinical community at large. Registration, lodging, and transportation may not be covered unless the attendee is a speaker or honoree. CME credit awarded by VUMC to non-employee physicians shall be valued at \$25 per credit hour and reported in the NMT system so that they can be tracked against the annual limit. However, the following CME programs are exempt and therefore not included in calculating the annual limit: Grand Rounds, Tumor Boards, Morbidity and Mortality Conferences, Journal Clubs and Compliance Education.

**Q. 16b. Can VUMC provide an honorarium to potential referral source to speak at a VUMC sponsored event?** VUMC may not pay for the registration, travel, lodging or transportation expenses for an individual to attend a VUMC hosted or sponsored event, unless the individual is either a speaker or an honoree, in which case an honorarium would be appropriate. The decision whether to award an honorarium should

not be based upon the actual or potential referrals made by the individual to VUMC. It would be expected that the individual chosen to speak or to be honored would be selected for his or her clinical excellence and expertise and not as the result of actual or potential referrals for clinical services. The amount of the honorarium should be appropriate to the circumstances. To the extent that the honorarium was provided to a physician who is an actual or potential source of referrals, the honorarium should be reported in NMT so that it may be tracked against the annual limit and should never exceed the annual limit (\$452 for CY22).

**Q.17 How do we document and track non-compensatory compensation? How are we going to know if something exceeds the limits?**

All non-monetary compensation should be reported using the [NMT system](#). If the amount entered potentially exceeds a limit for a particular community clinician, the Office of Compliance will contact you for more information.

**Q. 18 Do I have to report non-monetary compensation in NMT if my intent is not to generate referrals?**

For all items listed in Q. 11-16, the total value combined with other items provided over the course of the calendar year to any non-employee physicians (including immediate family members) may not exceed the CMS annual limit of \$452. The intent to generate referrals is not relevant. All non-exempt items provided to a physician who is an actual or potential referral source must be reported.

**Q.19 Who qualifies as an “immediate family member”?**

Immediate family members include the following relatives of a Non-Employee Physician: spouse, parent, child, sibling, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, or spouse of a grandparent or grandchild.

**Q.20 How do we know if a specific clinician is approaching the limit?**

The Office of Compliance and Corporate Integrity will contact you if you have provided non-monetary compensation to a physician that is approaching the CMS limit as reported in the NMT system (which is \$452 in 2022). Periodic cumulative reporting of amounts reported in NMT will also be provided on a select basis to individuals who have a business reason to have access to this information. Please contact the Compliance Office [compliance.office@vumc.org](mailto:compliance.office@vumc.org) for more information.

**Q.21 Do I have to get approval from NMT before providing the non-monetary compensation, or do I just have to report it after the fact?**

If possible, we encourage you to report non-monetary compensation in NMT prior to providing it so that you are aware of whether the items you are planning to provide would result in VUMC or an affiliate exceeding the CMS annual limit. If you have any concerns, you can always contact the Office of Compliance at [compliance.office@vumc.org](mailto:compliance.office@vumc.org).

**Q.22 Who is responsible for ensuring that these reports are entered in the NMT system?**

- Central Offices
  - Business Development/Physician Outreach: Senior Vice President, Clinical Enterprise Administration
  - Continuous Professional Development: Director
  - Development TBD
  - Senior Leadership Team TBD
- VUMC Departments and Divisions
  - Clinical Departments: Chief Business Officer or Administrative Officer
  - VUH: Chief Operating Officer
  - Adult Ambulatory: VP Ambulatory Operations
  - Regional Adult Ambulatory: VP Regional Ambulatory Services
  - MCJCHV: Chief Operating Officer
  - Pediatric Ambulatory: Chief Operating Officer
  - VPH: Chief Operating Officer
- Regional Hospitals and Affiliates
  - VBCH: Executive Director of Finance
  - VHAN and Population Health: TBD
  - VHS: Senior Director
  - VTHH: Executive Director of Finance
  - VWCH: Executive Director of Finance

**Resources:**

- [Contact the Office of Compliance](#) if you have any questions at all about referral activity and reporting requirements.
- [VUMC Policy: Benefits Provided to Non-Employee Physicians by VUMC and VWCH](#) (see Guidelines, page 6)
- [VUMC Policy: Benefits Provided to Non-Employee Physicians by VBCH and VTHH](#) (see Guidelines, page 6)
- [NMT system](#)