**Group Purchasing Programs: Introductory Guidance**

**Background**

If a PCA-HCCN intends to engage in group purchasing activities on behalf of its members either by establishing a new group purchasing organization (“GPO”) or by functioning as a GPO and directly conducting such activities, it is important to address potential concerns under the federal Anti-Kickback Statute.

The federal Anti-Kickback Statute[[1]](#footnote-1) prohibits payment of any remuneration to induce a person "to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service" or to induce a person “to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item” for which payment may be made wholly or partially by a federal health care program (including Medicaid). Thus, if a PCA-HCCN, on behalf of health center members or networks, arranges for discounts on goods and services purchased and the PCA-HCCN obtains a fee for performing such services from the vendor(s) of those goods and services, the payment and receipt of GPO fees could be considered remuneration paid to induce the PCA-HCCN to recommend the vendors’ goods and services, thereby implicating the Anti-Kickback Statute. It is noteworthy that Section 330, and any other health care programs funded in whole or in part with federal dollars, are considered “federal health care programs” for purposes of the statute.

Because an effective group purchasing program can reduce costs to purchasers and, ultimately, to federal health care programs, there is a “safe harbor” for certain GPO arrangements.[[2]](#footnote-2) If the GPO (either the PCA-HCCN or a related entity formed by the PCA-HCCN to engage in group purchasing activities) satisfies all of the safe harbor requirements, the payment from the vendor of the goods or services to the PCA-HCCN will be protected from anti-kickback prosecution. Specifically, the PCA-HCCN/GPO must have a separate written agreement with each health center member that intends to participate in the GPO arrangements. The written agreement must authorize the GPO to act as a purchasing agent for the member and it must provide for the following:

1. If the GPO’s fee is 3% or less, the PCA-HCCN must advise the members that it is receiving a fee (but not necessarily the amount of the fee).
2. If the GPO’s fee is more than 3%, the PCA-HCCN must advise its members of the amount or, if the amount is not determined, the maximum amount of the fee.
3. In all cases, the PCA-HCCN must advise its members in writing (at least annually) regarding the amount of fess received from each vendor attributable to the purchases made by the member.

**Advice and Recommendations[[3]](#footnote-3)**

If the PCA-HCCN intends to engage in group purchasing activities, either directly or through a related GPO entity, it is essential to satisfy the requirements of the GPO safe harbor.

* [Group purchasing programs](http://www.healthcentercompliance.com/subscriber/pca-toolkit/volume-2/848): Sample policy and procedure
1. 42 U.S.C. §1320a-7b(b), [↑](#footnote-ref-1)
2. 42 C.F.R. § 1001.952(j). [↑](#footnote-ref-2)
3. The Authors of these materials include attorneys at the law firm of Feldesman Tucker Leifer Fidell LLP. The advice and recommendations consist of general guidance based on federal law and regulations and do not necessarily apply to all PCA-HCCNs under all facts and circumstances. Further, these materials do not replace, and are not a substitute for, legal advice from qualified legal counsel. [↑](#footnote-ref-3)