

Changes to ICA Regulatory Definition

42 C.F.R. § 411.354(c)(2)

An indirect compensation arrangement exists if all of the conditions of paragraphs (c)(2)(i) through (iii) of this section exist:

(i) Between the referring physician (or a member of his or her immediate family) and the entity furnishing DHS there exists an unbroken chain of any number (but not fewer than one) of persons or entities that have financial relationships (as defined in paragraph (a) of this section) between them (that is, each link in the chain has either an ownership or investment interest or a compensation arrangement with the preceding link).

(ii)

(A)**(1)** The referring physician (or immediate family member) receives aggregate compensation from the person or entity in the chain with which the physician (or immediate family member) has a direct financial relationship that varies with the volume or value of referrals or other business generated by the referring physician for the entity furnishing the DHS; **and**

(2) The amount of compensation that the ~~and the individual unit of compensation received by the~~ physician (or immediate family member) **receives per individual unit** -

~~(4i)~~ Is not fair market value for items or services actually provided;

~~(2ii) Includes~~ **Could increase as the number or value of** the physician's referrals to the entity furnishing DHS ~~as a variable, resulting in an increase or decrease in the physician's (or immediate family member's) compensation that positively correlates with~~ **increases, or could decrease as** the number or value of the physician's referrals to the entity ~~decreases;~~ **or**

~~(3iii) Includes~~ **Could increase as the amount or value of the** other business generated by the physician for the entity furnishing DHS ~~as a variable, resulting in an increase or~~ **increases, or could decrease in as** the ~~physician's (or immediate family member's) compensation that positively correlates with the physician's generation of~~ **amount or value of the** other business **generated by the physician** for the entity **furnishing DHS decreases;** ~~in the amount of compensation per unit that positively correlates with the physician's generation of other business for the entity;~~ **or**

(iv) Is payment for the lease of office space or equipment or for the use of premises or equipment.

(B) For purposes of applying paragraph (c)(2)(ii)(A)**(2)** of this section, **the individual unit is:** ~~a positive correlation between two variables exists when one variable decreases as the other variable decreases, or one variable increases as the other variable increases.~~

(1) Item, if the physician (or immediately family member) is compensated solely per item provided.

(2) Service, if the physician (or immediate family member) is compensated solely per service provided, which includes arrangements where the “service” provided includes both items and services.

(3) Time, if the conditions of paragraph (c)(2)(ii)(B)(1) or (2) of this section are not met.

(C) If the financial relationship between the physician (or immediate family member) and the person or entity in the chain with which the referring physician (or immediate family member) has a direct financial relationship is an ownership or investment interest, the **nonownership or noninvestment interest closest to the referring physician (or immediate family member) is used to determine** ~~determination~~ whether the aggregate compensation varies with the volume or value of referrals or other business generated by the referring physician for the entity furnishing the DHS **and whether the amount of compensation that the physician (or immediate family member) receives per individual unit meets the conditions in paragraph (c)(2)(ii)(A)(2) of this section.** ~~will be measured by the nonownership or noninvestment interest closest to the referring physician (or immediate family member).~~ (For example, if a referring physician has an ownership interest in company A, which owns company B, which has a compensation arrangement with company C, which has a compensation arrangement with entity D that furnishes DHS, we would look to the aggregate compensation between company B and company C for purposes of this paragraph (c)(2)(ii).

(iii) The entity furnishing DHS has actual knowledge of, or acts in reckless disregard or deliberate ignorance of, the fact that the referring physician (or immediate family member) receives aggregate compensation that varies with the volume or value of referrals or other business generated by the referring physician for the entity furnishing the DHS.