

# POLICY & PROCEDURE

AG-Antikickback – Business Courtesies, Gifts, and Entertainment

<b>APPROVAL DATE OF CORPORATE COMPLIANCE COMMITTEE: 03/13/2024</b>	<b>CORPORATE COMPLIANCE COMMITTEE CHAIR SIGNATURE:</b> <i>Eileen S. Benz</i>
<b>APPROVAL DATE OF POLICY REVIEW COMMITTEE: 03/15/2024</b>	<b>EFFECTIVE/IMPLEMENTATION DATE: 03/15/2024</b>
<b>APPROVAL DATE OF POLICY REVIEW COMMITTEE CHAIR: 03/15/2024</b>	<b>POLICY REVIEW COMMITTEE CHAIR SIGNATURE:</b> <i>Eileen S. Benz</i>

**BACKGROUND, PURPOSE & RATIONALE:**

Birch Family Services (referred to as Birch or the Corporation) recognizes that there are legitimate and lawful reasons to accept or provide reasonable business courtesies. However, in healthcare, business courtesies pose a risk for conflict of interest or fraud and/or abuse related to anti-kickback laws and regulations. The Federal Anti-Kickback law prohibits the offer of payment, solicitation, or receipt of anything of value to induce or reward the referral of Federal health care program recipients, such as Medicare and Medicaid recipients. The Federal Anti-Kickback statute also prohibits the payment or receipt of any remuneration that is intended to induce the purchasing, leasing, or ordering of any item or service that may be reimbursed, in whole or in part, under a Federal health care program. It also prohibits the payment or receipt of any remuneration intended to induce the recommendation of the purchasing, leasing, or ordering of any such item or service.

**POLICY STATEMENT:**

The purpose of this policy is to assure that Birch complies with Federal Anti-Kickback laws. The policy provides guidance for providing business courtesies. Birch will follow all requirements in Social Service Law 363-D and 18 NYCRR Part 521.

1. Any business courtesy intended to induce or reward referrals or result in the purchase of goods or services is strictly prohibited.
  
2. It is the policy of Birch that gifts, entertainment, and other benefits will not be provided to a potential referral source, except as permitted by this policy.
  
3. Any business courtesies involving physicians or other individuals or entities in a position to refer individuals to Birch for services must strictly follow Birch’s policies and be in conformance with all Federal and State laws, regulations, and rules regarding these practices.
  
4. Follow the Birch Conflict of Interest policy that includes a section on gifts.

For the purpose of this policy, the following definitions apply:

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- **Affected Individuals:** All employees, volunteers, interns, independent contractors, Board of Directors and any/all agents of Birch Family Services.
  
- **Business Courtesies:** A business courtesy is anything of value, a favor, or a benefit provided free of charge or at a charge less than fair market value in the context of a business relationship. The Policy applies to gifts, entertainment, and hospitality involving the Corporation's employees, volunteers, interns, independent contractors, agents of Birch or Board members and its referral sources and business partners intended to enhance business relationships and/or further their mutual business interests. Examples include gifts, entertainment, or hospitality for the purposes of inducing:
  - Referrals for the Corporation's services or treatment;
  - The purchasing, leasing, or ordering of any item or service; or
  - The recommendation of the purchasing, leasing, or ordering of any such item or service.
  
- **Immediate Family Member:** For the purpose of this policy, an immediate family member is any person who is related by blood or marriage, or whose relationship with the employee, volunteer, intern independent contractor, agent of Birch or Board member is similar to that of persons who are related by blood or marriage. An immediate family member of a person includes:
  - o The person's spouse;
  - o Natural or adoptive parent, child, or sibling;
  - o Stepparent, stepchild, stepbrother, or stepsister;
  - o Father-in-law, mother-in-law; son-in-law; daughter-in-law; brother-in-law; or sister-in-law;
  - o Grandparent or grandchild; and
  - o Spouse of a grandparent or grandchild.
  
- **Nominal Value:** Birch has determined that items with a value of \$25 or less to be of nominal value.
  
- **Potential Referral Source:** A potential referral source includes a physician, other healthcare provider, or party who could reasonably be a source of referral of individuals to the Corporation for services or treatment.
  
- **Remuneration:** Any type of direct or indirect payment, bribe, rebate, or other type of inducement.

#### **PROCEDURES:**

1. Birch's employees, volunteers, interns, independent contractors, agents of Birch and Board members may not offer a potential referral source business courtesy unless the following criteria are met:
  - o The business courtesy is not based, directly or indirectly, on the volume or value of referrals or other business generated by the potential referral source;

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- o The business courtesy is not solicited by the potential referral source or the referral source's employees;
  - o The business courtesy does not consist of cash or the equivalent of cash; and
  - o The business courtesy does not violate the Federal Anti-Kickback statute or any state or Federal law governing claims submission.
2. All employees, volunteers, interns, independent contractors, agents of Birch and Board members must receive prior approval from the CFO and/or CEO before extending business courtesies to potential referral sources and business partners. The Compliance Officer will record any business courtesy extended to potential referral sources and business partners on the Gifts and Entertainment Recording Log attached to this Policy. The CFO will ensure that business courtesies are of nominal value.
  3. Employees, volunteers, interns, independent contractors, agents of Birch and Board members, and their Immediate Family Members are prohibited from receiving and/or accepting business courtesies from Birch's business partners or potential business partners as an inducement to purchase or lease goods or services.
  4. Employees, volunteers, interns, independent contractors, agents of Birch and Board members, and their Immediate Family Members shall not accept or solicit excessive gifts, meals, expensive entertainment, or other offers of goods or services that have more than a nominal value from vendors, suppliers, contractors, or other persons.
  5. Employees, volunteers, interns, independent contractors, agents of Birch and Board members may only retain gifts from vendors that have a nominal value of \$25 or less. (Refer to the Birch Conflict of Interest Policy, section on gifts). Gifts from vendors must be reported to the Compliance Officer and CFO and recorded on the Gifts and Entertainment Recording Log. If an employee, volunteer, intern, independent contractor, agent of Birch or Board member has any concern as to whether a gift should be accepted, the Compliance Officer should be consulted. To the extent possible, individual gifts should be discouraged, and if given, to the extent possible, these gifts should be shared with other individuals/employees at Birch.