

AMERICAN KIDNEY FUND

POLICY ON OIG COMPLIANCE (COMPLIANCE WITH 97-1)

I. Commitment to Compliance

The American Kidney Fund (AKF) is an independent 501(c)(3) charitable organization dedicated to fighting kidney disease and helping people live healthier lives. AKF achieves its mission, in part, by providing eligible patients with financial assistance to help treatment-related expenses.

As part of its Compliance Program, AKF operates in compliance with all applicable laws, including specifically the requirements and guidance of the U.S. Department of Health and Human Services, Office of the Inspector General (OIG), which provides oversight for charitable programs such as AKF's Health Insurance Premium Program (HIPP). In 1997, the OIG issued a favorable advisory opinion (OIG Advisory Opinion 97-1), which concluded that AKF's HIPP program complied with applicable legal and OIG requirements and guidance.

Specifically, in OIG Advisory Opinion 97-1, the OIG concluded that AKF's HIPP program would not violate 42 U.S.C. § 1320a-7a(a)(5) (the "Beneficiary Inducements CMP") because: (1) contributions to AKF by the Donor-Providers would not be made "to or on behalf of" the HIPP recipients, and therefore would not constitute remuneration under the Beneficiary Inducements CMP; and (2) while the premium grants made by AKF to HIPP recipients could constitute remuneration to beneficiaries, such grants would not be likely to influence patients to order or receive services from particular providers.

In arriving at these conclusions, the OIG considered several key safeguards of HIPP. AKF's policies and procedures were created to bolster compliance education efforts for staff as outlined below.

II. OIG Advisory Opinion 97-1 Safeguards and AKF Compliance

a. **Safeguard:** *AKF is a bona fide, independent charity, and will have absolute discretion regarding the use of contributions from donor-providers*

- **Compliance:** AKF's structure and policies and procedures provide it with absolute discretion regarding the use of contributions to HIPP. The AKF

Compliance Working Group and AKF Audit and Compliance Committee have day-to-day oversight of AKF's Compliance Program and the AKF Board of Trustees of HIPP subcommittee have primary oversight authority for HIPP. Membership on the AKF Board of Trustees HIPP subcommittee is restricted to exclude any employees, officers, shareholders or owners of any dialysis provider. Decisions affecting the operation of HIPP are made by AKF without influence of donor-providers.

b. **Safeguard:** *AKF staff will not consider the identity of the referring provider or the amount of any donation to AKF when making patient grant eligibility determinations.*

- **Compliance:** HIPP assistance is available to all financially needy ESRD and transplant patients regardless of the identity of the referring provider or the amount of donations made to AKF. AKF separates its fundraising efforts from the HIPP grant application process. Upon receipt of a grant request from an ESRD patient on dialysis or recently transplanted, a member of the HIPP staff reviews the grant request and determines eligibility based solely on the patient's financial status. HIPP staff who process grant applications and approvals do not have access to contributor records and do not know which providers make voluntary contributions and which providers choose not to make contributions.

c. **Safeguard:** *Donor-providers will not base the amount of their contributions to AKF on the amount of HIPP funding their patients receive, and contributions will not be earmarked for the use of particular beneficiaries or groups of beneficiaries.*

Compliance: If AKF receives a restricted or conditioned voluntary HIPP contribution, it does not recognize such restrictions and places the contribution in the HIPP pool for all patients. It then educates the donor on the requirements of 97-1. AKF's fundraising employees view incoming checks and are responsible for acknowledging provider voluntary contributions. These fundraising employees are distinct and independent from employees (patient services staff) who make eligibility determinations for HIPP assistance. In efforts to educate donors on voluntary contributions, AKF's sole suggestion is that they may use guidance included in 97-1 that says they can account for "the

amounts that the [donor-provider] would have otherwise expended on financially needy patients” but they are otherwise instructed that 97-1 will not permit restricted or conditioned contributions. With respect to issuing HIPP grants, they are made on a first-come first-served basis subject to the patient meeting the financial eligibility requirements and the availability of funding in the HIPP pool.

d. Safeguard: HIPP recipients have already selected a dialysis provider.

- **Compliance:** HIPP recipients have already selected their provider prior to submitting a grant request. While caregivers, medical social workers and other renal professionals continue to assist patients in identifying available sources of assistance (including grants from AKF), it should be noted that patients can apply directly to AKF for assistance. Even if a patient applies directly and without assistance, he or she has already selected their preferred dialysis provider. The AKF *Provider Code of Conduct* in its section on patient education requires that patients are always allowed the freedom to choose not only the health insurance coverage that best meets their needs but also the provider of dialysis treatment. Also, if a patient chooses to transfer to another dialysis provider their grant follows them.

e. Safeguard: HIPP will not be advertised to the public by donor-providers.

- **Compliance:** This provision covers prohibited activities by donor-providers and is intended to reduce the probability that a HIPP recipient would select a dialysis provider based on its participation in HIPP, potentially implicating Section 231(h) beneficiary inducement issues. While AKF cannot directly control the actions of dialysis providers and is not under any obligation to do so, it is aware that non-compliance in this area could threaten the integrity of HIPP. Thus, AKF will notify a provider, including the provider compliance officer if one exists, of any significant noncompliance with this safeguard of which it becomes aware.

f. *HIPP recipients will be able to select the provider of their choosing.*

- **Compliance:** A hallmark of 97-1 is patient's freedom to select the dialysis provider of his or her choice. AKF's payment of health insurance premiums for that patient through HIPP will expand, rather than limit, the patient's freedom of choice. Patients may change dialysis providers without affecting their eligibility for HIPP assistance. In addition, HIPP assistance is provided for the full plan year, even for those HIPP patients who receive a kidney transplant and no longer require dialysis treatment.

III. Additional Commitment to Best Practices

AKF operates in full compliance with requirements of the law and OIG guidance and has also adopted and enforces best compliance practices. Donors, patients and local communities place their trust in AKF because it continuously meets the highest ethical and compliance standards. AKF's service to kidney patients is further supported by:

- An independent and diverse Board of Trustees;
- Financial transparency through IRS Form 990, annual audits and annual reports posted to AKF's website;
- A commitment to efficiency and spending most of its resources on its programs. For over 17 years, AKF has spent at least 97 cents of every dollar to the exclusive use by its programs of patient services and education.
- Continuous monitoring of HIPP and other programs and issuing periodic enhancements when in the best interest of the patient.