

Compliance Tool: Model In-Office Phlebotomist Agreement

The following Model Agreement between a referring physician and a testing lab was created by Savannah, GA, lab compliance attorney **Adam Walters** and structured to minimize kickback liability risks to each party in accordance with the OIG 1994 [Special Fraud Alert](#), which remains the definitive source of federal guidance on the subject. Speak to your attorney about adapting the model for your own use.

IN-OFFICE PHLEBOTOMIST COMPLIANCE AGREEMENT

This In-Office Phlebotomist Compliance Agreement (“Agreement”) is made and entered into and shall be effective as of _____ 20__, by and between [INSERT BLANK] (the “Laboratory”), _____ (the “Phlebotomist”) and _____ (the “Facility”).

WHEREAS, Laboratory hired the Phlebotomist to collect specimens from patients for testing by Laboratory at one or more medical practices (the “Facility”);

WHEREAS, the Parties acknowledge and agree that federal and state law, as well as Laboratory’s own compliance program, prohibit an in-office phlebotomist from performing services or providing remuneration for the benefit of a referring providers office; and

WHEREAS, Phlebotomist and Facility represent that they will comply with Laboratory’s compliance guidelines regarding allowable tasks to be performed by the Phlebotomist.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the parties hereby agree as follows:

1. Allowable Services. Phlebotomist and Facility acknowledge and agree that the Phlebotomist may perform the following services:

A. Those tasks directly related to the collection or processing of Laboratory specimens. The following are examples of those tasks:

- (i) Collection of specimens from patients for testing at Laboratory, a reference laboratory affiliated with the Laboratory, or a laboratory which has a collection agreement with Laboratory;
- (ii) Specimen preparation for transporting; and,
- (iii) Specimen packaging for transporting.

B. Those clerical duties directly related to the handling and processing of Laboratory specimens. The following are examples of those clerical duties:

- (i) Obtaining billing information for Laboratory’s use; and,
- (ii) Clerical duties directly related to the specimen being collected, including but not limited to ensuring accurate completion of Laboratory requisition forms, confirming the processing of Laboratories specimen reports, and facilitating inquiries about specimen reports.

2. Prohibited Services. Phlebotomist and Facility acknowledge and agree that the Phlebotomist may not perform any of the following services:

A. Any tasks that are customarily the responsibility of the Facility’s office staff. The following are examples of such tasks:

- (i) Assisting, in any manner, with Point of Care testing with a CLIA waived cup or Facility's laboratory office analyzer in which Facility is billing; and,
- (ii) Performing medical or nursing assistant duties for Facility patients, including but not limited to the taking of vital signs.

B. The performance of any administrative and/or clerical duties that are customarily the responsibility of the Facility's office staff. The following are examples of such administrative and/or clerical duties:

- (i) Answering Facility telephones;
- (ii) Filing and/or reviewing patient files; and,
- (iii) Registration of patient demographics unto Facility's computer system.

C. The provision of any gifts or personal services for Facility's providers, management, or office staff.

3. No Influence. The Phlebotomist and Facility acknowledge and agree that the ordering of laboratory test(s) may only be ordered by a provider, e.g. physician or mid-level practitioner, treating the beneficiary for the purpose of using the results in the management of the beneficiary's medical problems. Accordingly, the Phlebotomist agrees that he/she will not take part in any activities that could influence the ordering provider's decision making, including but not limited to reviewing provider orders, reviewing patient drug regimens, and providing infection control services.

4. Monitoring. Facility acknowledges that Laboratory shall have the right to review the Phlebotomist's performance of this Agreement to verify his/her compliance with the provisions herein, including but not limited to Sections 1, 2, and 3 above, and Facility further agrees to cooperate and provide Laboratory access to the information, records, documents and other materials Laboratory needs to exercise said monitoring functions in a reasonable manner that does not cause Facility to incur any undue costs or business interruptions.

5. Term. This Agreement shall remain in effect as long as Phlebotomist is employed by Laboratory.

6. Remedies. In the event that Phlebotomist and/or Facility violate this Agreement, Laboratory reserves the right to terminate the employment of Phlebotomist and the account of the Facility.

7. Other Agreements. The parties acknowledge and agree that there may be other agreements between the parties, including but not limited an employment agreement. The compliance representations in this Agreement shall supplement, not supplant, any other agreements or arrangements between the parties. The parties further agree that these representations shall supplement, not supplant, any statutory or regulatory provisions applicable to the subject arrangement.

SIGNATURES

LABORATORY:

By: _____
Its: _____

PHLEBOTOMIST:

By: _____

FACILITY:

By: _____
Its: _____

LCA Source

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