

## **Changes in Referral Relationships with Physicians**

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Significant changes are likely in the near future in relationships between providers and referring physicians. Trade associations, for example, are providing substantial guidance for their members on this subject. PhRMA, a trade association whose members are pharmaceutical research and biotechnology companies, recently updated its Marketing Code. The revised Code was applicable as of January 1, 2009. *Although the Code applies only to members of PhRMA who voluntarily agree to follow it*, the Code has helped providers to understand changing standards regarding acceptable marketing practices.

With regard to taking lunches to physicians' offices, for example, the revised Code says that PhRMA members who elect to adhere to the Code may present information to healthcare professionals and their staff members during the workday, including at mealtimes. In connection with such presentations or discussions, the Code also says that it is appropriate for occasional meals to be offered as a business courtesy to the participants. The presentations must, however, provide scientific or educational value and meals must meet the following standards:

- Modest, by local standards;
- Not part of an entertainment or recreational event;
- Provided in a manner conducive to informational communication; and
- Limited to in-office or in-hospital settings.

Federal regulators have been active for many years in oversight and monitoring of referral arrangements with physicians and will surely continue to do so. The bases for these activities include the federal anti-kickback statute and the so-called Stark laws. Many states have enacted statutes and implemented regulations governing referrals.

State courts have also addressed these issues. In *Sloan v. South Carolina Board of Physical Therapy Examiners*, No. 26209 (S.C. Sept. 25, 2006), for example, the Supreme Court concluded that a state statute prohibits physical therapists from being employed by physicians who refer patients to them for therapy services. The Court also specifically recognized the right of the state's Board of Physical Therapy Examiners to enforce the statute against therapists who violate it.

Recent activity seems to indicate that state legislatures and licensure boards are likely to further regulate these relationships even more aggressively. State licensure boards in New Jersey, for example, may require physicians to refuse lunches provided by representatives of pharmaceutical manufacturers. Physicians may also be required to disclose payments of more than \$200.00 as a condition of licensure.

Beginning in July, 2008, and again in July, 2009, legislation enacted by the legislature in Florida became effective. As a result, under these two statutes, home care providers are generally prohibited from giving anything of value to physicians, members of physicians' office staff, and immediate family members of physicians.

There seems to be a perception among state governments that federal regulation of relationships between physicians and referral sources has been ineffective. Consequently, state regulation is likely to become more extensive and frequent. Stay tuned for more information about this important trend.