

Part II: Marketing Hospice Services

What Can Hospices Give to Discharge Planners/Case Managers?

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Discharge planners, case managers, and social workers certainly cannot accept cash payments from providers in exchange for referrals of patients. The Office of the Inspector General (OIG) of the U.S. Department of Health and Human Services, the primary enforcer of fraud and abuse prohibitions, has also clearly stated that providers may not give gift cards/certificates to referral sources.

So what can discharge planners/case managers accept from providers who want referrals? What about non-cash items that have a relatively low value?

The key area that must be considered to answer these questions involves a federal statute that prohibits illegal remuneration or kickbacks in the Medicare and Medicaid and other federal and state health care programs. This federal statute makes it a crime for providers to offer to give or actually give anything to anyone in order to induce referrals.

Case managers and providers who violate this federal statute may be guilty of criminal conduct and may go to jail or be forced to pay large amounts of money, in the form of fines or civil monetary penalties. They may also be excluded from participation in the Medicare/Medicaid and other state and federal health care programs. If case managers are licensed, they also face loss of licensure.

The OIG has stated that regulations will be published that will help to define what items of non-monetary value may be accepted from providers who receive referrals. Until specific guidance on these issues is provided by the OIG, providers and case managers may be wise to apply final regulations under the Stark laws, even though the Stark laws do not technically apply to hospices.

Specifically, the Stark regulations indicate that free items of low monetary value are unlikely to cause overutilization, if provided within reasonable limits. The regulations further state that as long as all of the following criteria are met, such non-monetary compensation will not violate the Stark laws:

- The annual aggregate value of non-monetary gifts does not exceed \$339.00. This amount increases slightly each year by the same amount that the consumer price index increases.

- Providers that give non-monetary compensation must make it available to those similarly situated, regardless of whether they refer patients to the provider for services.
- The compensation is not determined in any way that takes into account the volume or value of referrals to the provider.

At least in theory, providers and case managers could comply with the requirements of the Stark laws regarding non-monetary compensation to physicians, but still violate the kickback statute described above.

It seems unlikely, however, that the OIG will conclude that case managers received kickbacks and rebates, if the requirements of the Stark regulations described above are met. In other words, compliance with the requirements of the final Stark regulations may provide protection to case managers and providers with regard to non-monetary compensation received from providers by case managers, even though they may not technically apply.

Providers and case managers should, of course, monitor developments in this area, especially since the OIG has stated that specific regulations that apply to all practitioners will be published in the near future. The temptations are great, but there is much to be lost!

(More information about this topic is included in a book entitled: "Medicare/Medicaid Fraud and Abuse: A Practical Guide for Providers." To obtain a copy of this book, send a check for \$30.00 that includes shipping and handling made out to Elizabeth E. Hogue, Esq. to Order Fulfillment; 107 Guilford; Summerville, SC 29483)

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