

## Part B Insider (Multispecialty) Coding Alert

### COMPLIANCE: Avoid Holiday Gift-Giving Trouble With 7 Steps

You can't ignore the rest of the year.

The holidays can present one of the biggest compliance hazards to your practice, thanks to gift-giving for physician referral sources.

Gift-giving "is an intersection where the very rigid nature of the Stark Law collides head-on with common American business practices," warns attorney **Robert Ramsey III** with Buchanan Ingersoll & Rooney in Pittsburgh.

Non-healthcare businesses have given gifts to their business acquaintances for years, Ramsey says. "However, in the healthcare arena, such gifts can run afoul of the law depending on the circumstances."

Consult the Stark law when deciding on gifts for physician referral sources, says attorney **Rick Rifenbark** with Foley & Lardner in Los Angeles. That civil law limits gifts to physicians to an amount totaling \$355 in 2009 -- an amount adjusted yearly for inflation.

Think it over: Or better yet, consider refraining from giving gifts to referral sources at all, urges attorney **Robert Markette Jr.** with Gilliland & Markette in Indianapolis. "The simplest, and safest, rule is don't give gifts."

"Of course, that is not easy to do," Markette admits. "Providers, like any good business people, want to acknowledge good referral sources and good patients."

If you find foregoing gifts impractical, consider these rules set out in the Stark law:

- **Adhere to the limit.** The \$355 isn't a suggestion; it's a hard and fast limit. And it applies to the value of the gift, not what it actually cost you, Rifenbark points out.

For example: If you received some very expensive items for free and want to re-gift them to physicians, you have to count the fair market value of the item, not what you paid for it, Rifenbark explains.

- **Track your gift spending throughout the year.** The \$355 limit applies to all gifts given for the entire year. "If gifts have been furnished to physicians during the year, the value of previous gifts should be subtracted from the value of any remaining gifts," counsels attorney **Marie Berliner** with Lambeth & Berliner in Austin, Texas.

Providers must keep meticulous records of gifts so they can "easily and clearly show CMS, OIG, and anyone else that they were well within"the limit, Markette says.

Don't forget to include in the year-long tally things like meals, tickets for sporting events, etc., Markette advises.

- **Don't give cash or cash equivalents.** A Starbucks gift card might seem like just the thing for your coffee-loving referral source, but it violates the Stark law. "Providers can give only non-cash items of nominal value," warns Washington, D.C.-based attorney **Elizabeth Hogue**. "Gift cards and gift certificates are not allowed."

- **Don't vary your gifts based on referral volume.** Rewarding your best referral sources is one of those tactics that would be A-OK in the normal business world but is off limits in the Medicare environment.

Gifts to any referral sources should all be the same, regardless of the number or value of referrals. "Does one referral source get a \$10 gift ... while your best referral source gets a \$5,000 gift basket?" Markette asks. "That might cause the OIG to question what you are doing."

- **Beware of gift messages.** You don't want to implicate the criminal anti-kickback statute by giving your referral source a gift in exchange for her referrals. So be sure your gift message doesn't say something that implies that, like "thanks for all the patients you send to us."

"Be careful as to the written message that is delivered with the gift," Ramsey cautions. "Anything of value given as a solicitation of Medicare or Medicaid business could be interpreted as illegal remuneration under the anti-kickback law."

If the anti-kickback law is invoked, gifts are subject to much lower dollar amounts (see related story, page 332).

- **Consider anti-kickback law limits.** To be on the safe side, you may want to go with the lower antikickback limits for gifts, Markette suggests. Once you're over the \$10/\$50 anti-kickback law limits, you've got to prove that you are not trying to induce referrals.

A good argument is to say that it complies with the Stark regulation. But don't forget -- if even one purpose of the remuneration is to induce or reward referrals, you could have demonstrated the required intent for investigators to examine you.

- **Consult state laws.** Be sure to check your own state's laws to see if they put more stringent limits on you, Rifenburg says.