

## Part B Insider (Multispecialty) Coding Alert

### COMPLIANCE: Don't Forget Patient, Non-Physician Gifts in Your Compliance Efforts

Use the anti-kickback statute to guide you when you're giving presents to non-physician sources.

When it's time to spread holiday cheer, many providers like to include patients or other nonphysician referral sources in their giftgiving. But you'd better be careful, or you could end up on the OIG's naughty list.

When it comes to giving gifts to patients and non-physician referral sources, providers should consult the federal anti-kickback statute, attorneys advise. Under that criminal law, there is an exception for gifts that are \$10 per item, totaling \$50 per year, notes attorney **Rick Rifenburg** with Foley & Lardner in Los Angeles.

The amounts in the anti-kickback statute are probably lower than the Stark limits because patients are seen as more likely to be influenced by lower-dollar items, Rifenburg says.

#### Now's Not The Time For A Game Of Compliance Chicken

If your practice decides to furnish gifts of more than \$10 to patients or other non-physician referral sources, they are flirting with prosecution by the HHS Office of Inspector General, warns attorney **Robert Markette Jr.** with Gilliland & Markette in Indianapolis.

"It is hard to say when OIG would prosecute," Markette tells Eli. "Is it \$15? \$20? \$100? The larger the number, the more likely you are to get prosecuted."

#### Keep Your Eye on the Limit

Do this: Smart practices will keep gifts under the \$10 limit, Markette advises. Given the intense scrutiny the government has had practices under lately, "I would not want to be the provider pushing the envelope," he says.

"Obviously, an illegal activity is illegal whether they catch you or not, but in the current environment, they are far more likely to catch you," Markette says.

Providers adhering to the antikickback statute should use the same playbook as those adhering to Stark -- track gifts throughout the year to make sure they don't exceed the limit, give only non-cash gifts, give the same gifts to everyone so they aren't based on referral volume, and make sure they are also acceptable under applicable state laws (see related story, p. 331).