Part B Insider (Multispecialty) Coding Alert

COMPLIANCE: Make a List -- And Check It Twice Before Giving Gifts

Stark II refinements change little, but caution is still the name of the game

Bear too many gifts this holiday season, and you could wake up with a huge compliance headache--even a felony charge--in the New Year.

Providers who aren't circumspect in their holiday gift-giving can run afoul of the Stark Law, which regulates physician referrals to certain healthcare services, and the broader federal Anti-Kickback Statute. Many states also have their own anti-kickback laws, making compliance even trickier.

To bring cheer without bringing legal action, keep these issues in mind before handing out presents:

1. Make it official. To steer clear of trouble, share your practice's gift-giving guidelines with your staff.

The -encourages all healthcare professionals billing Medicare, Medicaid and similar programs to have corporate compliance plans that can be scaled for large and small practices,- says **Howard L. Sollins, Esq**., of **Ober Kaler** in Baltimore.

2. Obey the gift limit. -The best approach is to use the Stark ceiling on such compensation arrangements, which is adjusted annually and is currently $328.00,- Sollins advises. -However, that is an annual amount, so that if there have been other gifts, dinners, or other items of value given during the year, those have to be taken into account in determining what can be given during the holidays.-

Keep in mind that the anti-kickback act provides no blanket escape clause for small gifts, if even one purpose of the gift is to induce a referral.

-One of the few changes in Stark II's Phase III that actually loosened the rules concerns these nonmonetary gifts,- says **David C. Harlow, Esq**., of **The Harlow Group** in Boston. -If it turns out that the value of gifts given in the course of a calendar year was over the limit (but not more than 50 percent over), the physician has 180 days from date of receipt to pay back the excess.-

3. Don't assume nonphysicians can accept unlimited gifts. One orthopedic surgeon told the Insider that a physical therapist refers a lot of patients to him, so he sends that PT a gift card each year. Because Stark laws cover referrals made by physicians, he assumes he is free to send the PT any gift he pleases.

Not so fast, Harlow says. -He wouldn't violate Stark, but the anti-kickback law prohibits soliciting or giving anything of value in return for a referral that could be reimbursed by Medicare or Medicaid--that would govern the orthopedist's gift to the PT.-

OIG compliance guidelines say that gifts of -nominal value- are OK under these circumstances. -OIG advisories peg -nominal value- at $10 per item, no more than $50 per year,- Harlow says. -Unlike the Stark law, which is a strict liability statute, proving a violation of the anti-kickback law requires proving intent: Was one intent of a more-than-nominal gift to reward or induce referrals? If the answer to that question is yes, then there is at least a technical violation of the statute, but enforcement is left to the government's discretion.-

4. Don't take the -no one will find out- approach. Suppose a speech-language pathologist gets a lot of referrals from a family physician. She sends him a $500 gift basket each year for the holidays, but believes that no one would know what she spent on it, so there's no way she could be discovered to be in violation of the $300 limit.

-As a general matter with respect to any compliance issue, whether in connection with the Stark law, anti-kickback law or otherwise, the applicable standard governing conduct should never be whether the particular practice would be discovered or not,- Sollins advises. -As with relationships between various kinds of Part B suppliers and whether -designated health services- referrals are involved, the Stark law may or may not be implicated. But the federal anti-kickback law would always be implicated in such referral relationships.-