

## Part B Insider (Multispecialty) Coding Alert

### Compliance: Tis The Season For Giving " If You Stay Within the OIG's Guidelines

#### Keep government guidance in mind when deciding on your holiday gift list.

Under the face-to-face requirement and other fraud and abuse scrutiny, referrals are down this year for many providers. But don't let that tempt you into furnishing lavish gifts to your referral sources this holiday season.

"Gifts from health care providers to referral sources, patients, vendors, and colleagues can create unintentional sticky situations," cautions attorney **Patricia Hofstra** with Duane Morris in Chicago. "Many businesses give gifts during the holiday season as a token of friendship and appreciation, but for health care providers, the situation is complicated by the Stark laws and the anti-kickback fraud and abuse prohibitions."

Providers should look to avoid any gift giving that could be viewed as inducement to a referral source, advises attorney **Kendra Conover** with Hall Render in Indianapolis. "The federal government has repeatedly advised that home health agencies should not utilize prohibited or inappropriate conduct (e.g., offer free gifts or services to patients) to carry out their initiatives and activities designed to maximize business growth and patient retention."

That may mean you have to put the kibosh on any luxurious gift baskets you were planning to give your favorite referring physicians. "Certain small gifts such as pens or coffee mugs are permissible, other larger gifts are not," Hofstra counsels.

The OIG has made clear that its bright line for gift giving is no more than \$10 per gift and \$50 per year, Conover points out.

It's also a good idea to give gifts only as part of "generally accepted practice," Conover adds. But holiday gifts fall pretty squarely into that category.

Important: You should have a corporate compliance policy that includes your gift-giving procedures, Conover recommends. And you should have legal counsel review any gift-giving arrangements to referral sources, she urges.

Bottom line: "Health care providers should consult with counsel and exercise caution when giving gifts during the holidays, or at any time, to avoid the appearance of impropriety and potential prosecution for legal and regulatory violations," Hofstra counsels.

#### What About Accepting Gifts?

You should exercise similar caution when it comes to accepting gifts, whether they come from referral sources, colleagues, or patients, suggests attorney **Ross Lanzafame** with Harter Secrest & Emery in Rochester, N.Y. Gifts from colleagues and patients can be particularly problematic, Lanzafame worries. That's because "although the gift may appear innocent, the act of giving and accepting a gift can potentially create a conflict of interest for the recipient," he says.

What's the problem? "When someone gives a gift, the social construct within which we generally operate is that the gift will in some way be reciprocated.

It is the polite thing to do," Lanzafame explains. "This social construct can potentially tempt the recipient to make decisions not motivated by objective factors, but rather based on the subjective in order to reciprocate."

For example: "With a patient, that might create a temptation to understate progress and overstate need" so she can qualify for more services, Lanzafame says.

While it won't be a popular decision, "my rule of thumb, as difficult as it may be, is not to accept gifts," Lanzafame says. "Consider advising patients and colleagues who desire to give gifts to make a donation to some public charity instead."