

Part B Insider (Multispecialty) Coding Alert

KICKBACKS: 7 Tips Keep Your Gift-Giving Nice, Not Naughty

If it looks too much like cash, it could put you in the hot seat

'Tis the season to give gifts to people you work with, including your referral sources--and that can get you into big trouble.

If you're not careful, that gift to your referring specialist or hospital can turn into the Ghost of Christmas Past when you're charged with kickback violations. You can run afoul of the Stark Law, which governs physicians sending patients to providers with whom they have a financial relationship. And you can also run into the broader Anti-Kickback Statute.

Providers who want to play it safe should forego holiday gift-giving to referral sources altogether. "There are attorneys who say that if even one purpose is to induce referrals, providers should not give anything to referral sources," notes Burtonsville, MD-based health care attorney **Elizabeth Hogue**.

But legal experts agree you are unlikely to run into kickback violations if you follow these expert tips to stay on the feds' "nice" list this year:

1. Walk the line on cash. Many providers realize they can't hand over cash, but they may not realize that applies to cash equivalents, such as gift certificates and gift cards too, Hogue notes. Give "non-monetary items only," she stresses.

2. Obey the gift limit. The Stark Law limits gifts to referring physicians at a value of \$300 per year, notes attorney **Thomas Kirkland** with **Copeland Cook Taylor & Bush** in Ridgeland, MS. "This is an annual cap, so make sure the total of all gifts to any referral source for the year does not exceed this amount," Kirkland cautions.

Although Stark technically applies only to physicians, Hogue recommends the \$300 limit as a good rule of thumb for all providers to whom you give gifts.

3. Avoid a pricey gift. Even if you haven't given any other gifts to a referral source all year, you probably shouldn't splurge and buy a fancy gift to make up for it.

"Don't give anything lavish," recommends attorney **Charles Oppenheim** with **Foley & Lardner** in Los Angeles, CA. "Consider limiting the dollar value to \$25 or something similarly modest," Oppenheim says.

4. Go with a consumable gift. Consider giving perishables such as cookies or flowers instead of something lasting like a watch or pen, Oppenheim advises. "Consumable or perishable gifts ... are more consistent with the season," Kirkland adds.

5. Buy to share. Give something the referral source can share with staff, like a box of chocolates, Oppenheim urges. Consumable and perishable gifts fit this criteria nicely, Kirkland agrees.

6. Send the right message. Avoid giving the impression that you are rewarding a gift recipient for referrals. "Remember this is a gift, not a payment for referrals," Kirkland says. "The selection of the gift and the manner of delivery should convey the appropriate sentiment."

7. Beware patient gifts, too. Providers "need to be cautious about what they give to needy patients and their families," Hogue warns.

The **HHS Office of Inspector General** says providers can give no more than \$10 at once or \$50 per year to patients, she reports. "Compliance with this standard doesn't allow providers to do much for patients," Hogue acknowledges.

"To avoid compliance issues and gain the ability to provide more assistance ... agencies should work with charitable organizations to assist their patients who have basic needs," like food, Hogue recommends.