

Part B Insider (Multispecialty) Coding Alert

Professional Courtesy: When Is It Better To Be Professionally Rude?

New Stark II reg makes picture more complicated for physicians

Professional courtesy. You want to show respect for other health professionals and their family members, but these days it's a legal minefield.

Give free or discounted care to other physician or their family members or employees, and you could be facing kickback charges or accusations of copayment waivers. Luckily, the fraud watchdogs have clarified the issue recently.

The **HHS Office of Inspector General** warned of the pitfalls of professional courtesy in its draft compliance plan for individual and small group physician practices. The OIG warned that if you waive the entire fee for services rendered, you shouldn't choose the recipients based on referrals or other business generation. If you waive only copayments, then again you shouldn't take into account referrals. But if you waive copayments for a Medicare beneficiary who isn't financially needy, it may violate a law against offering inducements to beneficiaries.

But more recently, the Phase two interim final rule for the Stark II law offers a whole new exception for professional courtesy, under Section F, "compensation exemptions." The Stark reg says that "you have to offer the same courtesy to everyone in the community," explains attorney **Robert Portman** with **Jenner & Block** in Washington. That means all physicians at a local entity or community, plus employees or family members, without regard to referrals.

In the past, some attorneys said the Stark law allowed professional courtesy under the non-monetary compensation exception, which limited non-monetary gifts to \$300 per year. But the new exception doesn't limit professional courtesy at all.

This new Stark II provision comes under the category of "be careful what you wish for," says Portman. Physicians may have wanted the feds to clarify the minefield of professional courtesy, but the clarification "forces you to have a level of consistency that most physicians don't want to undertake and undermines the 'courtesy' part of it," says Portman. The only silver lining: if a physician felt pressured to provide professional courtesy in the past, now he or she has a perfect excuse for avoiding it.