

Outpatient Facility Coding Alert

Reader Question: Delve Into Nuances of CMPL

Question: What are some things we need to remember when offering complimentary items or services in our ASC?

Florida Subscriber

Answer: The Civil Monetary Penalties Law (CMPL) prohibits many different behaviors, but in terms of marketing, it prohibits offering, soliciting, or receiving kickbacks for referrals. It also prohibits offering inducements to program beneficiaries if you know or should know that the remuneration is likely to influence that beneficiary's decision to recommend your surgery center to others or utilize it themselves.

The government is looking at whether or not the remuneration will affect the patient's choice of facility or provider, and that's particularly true if that remuneration is part of a marketing strategy. The CMPL definition of "remuneration" includes "transfers of items or services for free or for other than fair market value." A few examples are:

- **Insurance-only billing:** Avoid waiving patient co-pays or deductibles unless you've made good faith determination of financial need. It should never be routine or part of any advertisement.
- **Discounts:** Be sure that any discounts or waivers, such as prompt pay discounts, cash discounts, or hardship waivers, are administered consistently and compliantly, and that you have a corresponding written policy.
- **Free transportation:** The Office of Inspector General (OIG) provides for a few exceptions here, notes attorney **Kim C. Stanger** in his recent webinar for Holland & Hart, LLP. For example, if the program is offered to all eligible patients, not just beneficiaries of government programs, the type of transportation is reasonable, and if you operate in an area where public transportation or parking is scarce.

You may offer nominal gifts, items of low value, if they meet the following guidelines:

- They are not cash or cash equivalents (like Visa gift cards).
- They have a retail value of less than \$10 individually or an aggregate value of \$50 per year per patient.

You may also provide free tests or screenings as long as they meet the following requirements:

- They promote certain types of preventative care (e.g., free prostate exam).
- The patient is not directed to any particular provider.
- There are no special discounts or follow-up services offered.
- You advise patients to visit their own provider in the case of abnormal results.