

Health Information Compliance Alert

Kickbacks: Check This List Twice Before Giving Gifts

New Stark II refinements change little -- but plenty of caution is still in order.

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.

With the feds' fraud spotlight back on health care, this is an especially good year to review your gift-giving policies.

"Will a simple box of chocolates land a nurse in jail? Probably not, but under the wording of the law, it could," cautions attorney **Liz Pearson** of **Pearson & Bernard** in Covington, KY.

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

Big risks: For providers, the plethora of laws means that too often giving gifts brings the threat of civil or even criminal action by fraud-weary federal and state officials.

To bring cheer without bringing legal action, run through this checklist before playing Santa:

1. **Make it official.** To steer clear of trouble, include gift-giving guidelines in a compliance plan for your agency -- and remind staff about the fine points of the policy at the start of the holiday season.

"Compliance is best achieved if agencies have policies and procedures governing these issues and educate staff about them," says Burtonsville, MD-based health care attorney **Elizabeth Hogue**.

2. Obey the gift limit. The Stark Law's annual cap on gifts to referring physicians stands at no more than \$300 per year, notes Pearson. Most experts say that it's wise to keep the threshold much lower -- or to skip giving any gift to physicians in a position to refer patients.

"The anti-kickback act provides no escape clause for small gifts, if [even] one purpose of the gift is to induce a referral," Pearson tells **Eli**.

"Home health agencies typically think of the annual Christmas gift as a thank-you," she explains. "But what are they thanking the doc for? Referrals, most likely."

If that's the case, consider yourself in technical violation of the statute, says Pearson.

Tip: Although Stark technically applies only to physicians, Hogue recommends applying its restrictions generally to all providers to whom you consider giving gifts.

3. **Don't jump on the gift-card bandwagon.** Retailers and restaurants have made it incredibly easy to pick up a gift card for their products and services, but don't take the marketing bait. Rules restricting cash gifts also apply to cash equivalents, including gift certificates and gift cards, notes Hogue.

4. **Perishables are preferable.** If you do give a gift, consider something like cookies or flowers. Such gifts can be shared and are perishable -- and that makes them less likely to be conceived as "profit" than gifts such as pricey watches or pens.

Good news: The recent changes to Stark II have little effect on gift-giving, so you won't need to revamp your compliance plan as it relates to gift-giving. But do note this one exception: Under the new changes, if one physician in a practice receives some compensation from an HHA, all doctors in the group are affected by the relationship and are precluded from making a referral, explains Pearson.

"A doctor/HHA relationship can no longer be shielded through a group practice," she notes.