

Compliance Today – December 2021 Compliance with gifts to beneficiaries

By Betsy Wade, MPH, CHC, CNA

Betsy Wade (bwade@signaturehealthcarellc.com) is the Chief Compliance and Ethics Officer at Signature Healthcare in Louisville, KY.

As we enter the season of gift-giving, it is important to remember that the Office of Inspector General (OIG) has been providing healthcare organizations with guidance on gifts to Medicare and Medicaid beneficiaries for more than two decades.

OIG first addressed gifts to beneficiaries in a 2000 advisory opinion, which stood for 16 years before being updated to a policy.^[1] Five years later, with the COVID-19 pandemic a public health emergency, the focus on gifts to beneficiaries has not waned, with the OIG issuing further guidance on gifts to beneficiaries as an incentive to be vaccinated.^[2]

OIG has concerns about providers and managed care programs providing anything of value to beneficiaries. If the gifts were intended to induce the use of reimbursable items or services, then the gifts likely would implicate the federal Anti-Kickback Statute and the Civil Monetary Penalty Law provision prohibiting inducements to beneficiaries.

Gifts to beneficiaries policy

Under the OIG policy, providers can offer beneficiaries gifts with a retail value of no more than \$15 per item and cannot exceed \$75 in total per patient annually. Cash and cash equivalents are prohibited. More expensive items can be provided if the gift fits into a statutory exception under section 1128A(a)(5) of the Social Security Act. It always is a good idea to check state laws where the organization operates because state laws can be more restrictive.

These gifts are not required to be tracked. But many providers document gifts to beneficiaries in the patient's medical record to ensure there is documentation to show compliance.

COVID-19 vaccine incentives FAQs

Given the number of entities providing gifts such as food, tickets to events, and cash to individuals who receive the COVID-19 vaccine, the OIG posted answers to some frequently asked questions on the topic in May.

OIG acknowledged "effective, expeditious, and widespread vaccine administration is crucial to the COVID-19 pandemic response," and that "certain incentives and rewards may promote broader access to and uptake of COVID-19 vaccinations."

During the public health emergency, the OIG said providers and managed care organizations that offer a gift to beneficiaries receiving the COVID-19 vaccine are at low risk under the federal Anti-Kickback Statute if the gift is:

1. Provided in connection with receiving a COVID-19 vaccine authorized by the Food and Drug Administration and administered in accordance with all regulatory requirements;
-

2. Not tied to or contingent upon any other arrangement between the entity and beneficiary;
3. Not conditioned on the past or anticipated future use of reimbursable items or services; and
4. Offered without taking into account the patient's insurance unless being offered by a managed care organization and eligibility is limited to enrollees.

¹ U.S. Department of Health & Human Services Office of Inspector General, "Office of Inspector General Policy Statement Regarding Gifts of Nominal Value To Medicare and Medicaid Beneficiaries," December 7, 2016, <https://bit.ly/3Awou6p>.

² U.S. Department of Health & Human Services Office of Inspector General, "FAQs—Application of OIG's Administrative Enforcement Authorities to Arrangements Directly Connected to the Coronavirus Disease 2019 (COVID-19) Public Health Emergency," last updated May 24, 2021, <https://oig.hhs.gov/coronavirus/authorities-faq.asp>.

This publication is only available to members. To view all documents, please log in or become a member.

[Become a Member Login](#)