

## Compliance Today – July 2024



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## Physician gifts: Big things come in small packages

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By Stephanie Gross, Emily Brodtkin, and Charles Oppenheim

A gift goes a long way in showing appreciation, and physicians are no exception. Like the rest of us, they enjoy free restaurant meals and concert tickets. At the holidays, they may be thrilled to be the new owners of a branded coffee cup, notepad, fleece jacket, or blanket. And when a hospital holds its annual golf fundraiser, they are happy to receive “comped” entrance fees. However, providing physicians gifts and other business courtesies can raise compliance concerns.

It typically falls on compliance officers to track and manage these items and determine whether they are subject to the annual limits on physician gifts contained in the “nonmonetary compensation” exception to the federal self-referral law (Stark Law).<sup>[1]</sup> It might seem that the rules on nonmonetary compensation take the joy out of gift-giving.<sup>[2]</sup> When expressing appreciation to physicians, the last thing you want to consider is whether you’ve inadvertently crossed the annual limit for in-kind compensation. This article provides an overview of these requirements so you can be confident that your gifts are not creating compliance concerns.

### The Stark Law and the exception for nonmonetary compensation

The Stark Law effectively regulates compensation arrangements between hospitals and other entities that provide “designated health services” (DHS) on the one hand and the physicians who make referrals to those entities for DHS for Medicare patients on the other. (Here, we refer to any entity that provides DHS, such as a hospital, as a “DHS entity.”) Any such compensation arrangement must fit within a specific exception under the law or its implementing regulations to comply with the Stark Law. In recognition of the fact that physicians often receive small, in-kind gifts or other free items or services from DHS entities, the Centers for Medicare & Medicaid Services (CMS) has established an exception for nonmonetary compensation; this is sometimes referred to as the “de minimis” compensation exception.

The exception allows nonmonetary compensation of a set amount per calendar year. In 2024, the annual limit is \$507 (this figure increases with the consumer price index each year).<sup>[3]</sup> As is required for several Stark Law

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exceptions, the compensation cannot be determined in a manner that takes into account the volume or value of referrals or other business generated by the physician; this precludes a direct quid pro quo between a physician and a DHS entity. Nor can it be solicited by the physician or the physician's practice. This latter requirement prevents physicians from making referrals to a DHS entity conditional on receiving certain gifts. CMS has explained that this requirement limits the exception to gifts that fit within the term's ordinary meaning—that is, a “voluntary transfer made without consideration or compensation expected or received in return.”<sup>[4]</sup>

The rule does not contain a per-instance dollar limit, but by its very nature, it requires a DHS entity to track the dollar value of items furnished to a physician throughout the year. There is one situation in which a DHS entity does not need to track in-kind gifts: an entity that has a formal medical staff is permitted to provide one local medical staff appreciation event per year, such as a holiday party, and the value to the physician of attending the event does not count towards the annual limit. This special rule, however, does not give a DHS entity the freedom to furnish its medical staff with gifts in addition to simply attending the event. CMS has cautioned that gifts provided in connection with the medical staff appreciation event, including door prizes and the like—should be counted toward the annual cap for nonmonetary compensation.

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