



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Touching Lives Every Day"

COMPLIANCE ALERT 11-26

Tracking Physician Incidental and Non-Monetary Compensation: How about that "free" flu shot?

Stark law prohibits a physician from referring Medicare or other government payer patients for designated health service to an entity with which the physician (or an immediate family member) has a financial relationship, unless one of the 35 or so exceptions in the Stark law applies. At HHSC, the primary exceptions we rely on meeting is the personal services (contract) exception or bona fide employment arrangement.

All Physician "Compensation" must meet an exception to be Stark-compliant:

"Compensation" is typically only thought of as salary or contractual payments. However, physician compensation also means items or services (including cash equivalents) that often would go "unnoticed" or be called "incidental" for other contractors for employees. These include such things as parking spaces, turkeys at the holidays, small gifts, dinners for recruitment, and yes, even flu shots given to physician providers.

Two Stark Exceptions allow these types of smaller or different types of compensation:

- **Non-Monetary Compensation up to \$359 per year.** Compensation from an entity in the form of items or services (no including cash or cash equivalents) that does not exceed an aggregate of \$359 per year, if all of the following conditions are met:
 - Compensation is not determined in any manner that takes in to account the volume or value or referrals or other business generated by the referring physician
 - Compensation may not be solicited by the physician or the physician's practice (including employees and staff members)
 - The compensation arrangement does not violate the anti-kickback statute or any other low governing billing or claims submission.

Examples might include dinners provided to physicians at a restaurant as part of an interview team, a turkey to the doctor, flowers on the doctor's first day of work, CME costs, and a flu shot (unless another exception applies).

- **Medical staff incidental benefits.** Compensation in the form of items or services (not including cash or cash equivalents) from a hospital to a member of its medical staff with en the item or service is used on the hospitals' campus, if all of the following conditions are met:
 - *The compensation is provided to all members of the medical staff practicing in the same specialty (but not necessarily accepted by ever member to whom it is offered) without regard to the volume to value of referrals or other business generated between the parties.*
 - *Except with respect to identity of medical staff on a hospital web site or in hospital advertising, the compensation is provided only during periods when the medical staff members are making rounds or are engaged in other services or activities that benefit the hospital or its patients*
 - *The compensation is provided by the hospital and used by the medial staff members only on the hospital's campus. Compensation, including, but not limited to, Internet access, pagers, or other devices used away from the campus only to access hospital medical records or information to access patients or personnel who are on the hospital campus as well as the identification of the medical staff on a hospital web site or in the hospital advertising meets the "on campus" requirement.*
 - *The compensation is reasonably related to the provision of, or designed to facilitate directly or indirectly the delivery of, medical services as the hospital.*
 - *The compensation is of low value (less than \$30) with respect to each occurrence of the benefit.*

Examples might include meals provided to all hospitalists at the cafeteria while on duty and restricted to the doctor, CME costs if the CME is provided to all physicians in the specialty, is on campus, and costs less than \$30, the parking space if offered equally to all physicians, and the flu shot if offered to every physician while on campus unless another exception applies.

Action Needed: ALL compensation provided to a physician must be accounted for and tracked to comply with Stark regulations. It is important that hospitals track and document all forms of compensation—even these “minor” ones—in some sort of log to ensure that the \$359 annual limit is not exceeded and that any incidental staff benefits meet all the criteria above. Any questions about the provision of compensation for physicians (of any type) should be referred to the Compliance or Legal departments for clarification.

Source: http://www.cms.gov/PhysicianSelfReferral/50_CPI-U_Updates.asp