



OPERATIONAL MEMO

Title: Compliance Guidance on Offering Gifts and Other Inducements to Beneficiaries	Topic: Provider Compliance Guidelines
Audience: Medicaid Providers	Sub-Topic: Provider Fraud
Supersedes Number: N/A	Division: Fraud, Waste and Abuse
Effective Date: April 24, 2024	Office: Medicaid Operations Office
Expiration Date: April 24, 2026	Program Area: Member/Client Fraud
Key Words: Prohibition of Gifts, Inducements, Medicaid Members, Provider Fraud, Public Benefits Theft, Criminal Prosecution	
Legal Authority: ANTI-KICKBACK STATUTE; 42 U.S.C.1320A-7A, 42 U.S.C. 1320A-7B(B) 42 CFR 1003.101. OIG SPECIAL ADVISORY BULLETIN REGARDING GIFTS OF NOMINAL VALUE TO MEDICARE AND MEDICAID BENEFICIARIES, OIG SPECIAL ADVISORY BULLETIN ON OFFERING GIFTS AND OTHER INDUCEMENTS TO BENEFICIARIES.	
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Operational Memo Number: HCPF OM 24-015	
Issue Date: April 24, 2024	
Approved By: Sarah Geduldig	

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Purpose and Audience:

The purpose of this Operational Memo is to inform Medicaid providers on the standards for offering gifts and other inducements to beneficiaries, in line with 42 U.S.C. 1320a-7a of the Social Security Act, 42 CFR 1003.101, the OIG Special Advisory Bulletin on Offering Gifts and Other Inducements to Beneficiaries, and the OIG Special Advisory Bulletin on the General Policy Regarding Gifts of Nominal Value to Medicare and Medicaid Beneficiaries. This memo seeks to ensure compliance with federal statute, regulations, and guidance, aiming to uphold program integrity and prevent undue influence on Medicaid member choice.

Information:

Background:

This Operational Memo provides guidance on the prohibition of offering any form of remuneration to Medicaid members to ensure Medicaid members have unbiased access to Medicaid services and maintaining the integrity of healthcare choices within the Medicaid program.

Specific Prohibitions Based on OIG Guidance:

The OIG policy statement on gifts of nominal value to Medicare and Medicaid beneficiaries has set the definition of "nominal value" to a retail value of no more than \$15 per item or \$75 in total per patient in a calendar year. This guidance also states that gifts should not be cash or cash equivalents. The OIG opinion states that any remuneration, broadly defined as anything of value, including but not limited to waivers of copayments and providing free services, is likely to improperly influence a member's choice of provider. A Medicaid provider can give a member a small item like a calendar or a water bottle as a token of appreciation, however, money or anything expensive such as a \$20 gift card is prohibited.

Specific Examples of Prohibited Activities:

- Medicaid providers are not allowed to offer gifts to members, worth more than \$15 each.
- In the case where a Medicaid provider gives several gifts to a member, the total value of gifts given to any one member over a year cannot add up to more than \$75.
- Medicaid providers are not allowed to offer any cash or similar to cash gifts such as gift cards, money, or vouchers.

Providers May Offer Beneficiaries More Expensive Items or Services That Fit Within the Below Exceptions:

- A Medicaid provider can charge different amounts for copays, like less for generic drugs or using mail-order pharmacies.
- A Medicaid provider can offer benefits to encourage members to get preventive care, like vaccines or check-ups.
- Anything that is already allowed under the anti-kickback statute safe harbor allows a provider to offer more expensive items or services. See 42 CFR 1001.952.
- Hospitals can waive certain outpatient service fees that exceed the mandatory minimum copayment amount.
- Provider practices that fit within an exception found at 42 CFR 1001.952 or a provider has received a "favorable advisory opinion" from the Office of Inspector General (OIG)

Failure to comply with federal and state statute, rule, or guidance related to this issue may result in further action in accordance with 10 C.C.R. 2505-10, Section 8.076, including but not limited to a Request for Written Response, Termination for Cause, and/or Referral to Law Enforcement.

Action To Be Taken:

1. Review and understand the standards for offering gifts and other inducements to beneficiaries.
2. Ensure all inducements given to Medicaid members comply with the \$15 per item and \$75 annual limit.
3. Don't offer cash or cash-equivalent gifts such as gift cards or vouchers.
4. Apply the specified exceptions for copays, preventive care incentives, or safe harbor provisions only as defined in 42 CFR 1001.952.
6. Report any non-compliant activities to the Medicaid Operations, Fraud, Waste and Abuse Division.

Definition(s):

Remuneration. Section 1128A(a)(5) of the Act prohibits the offering or transfer of “remuneration.” The term “remuneration” has a well-established meaning in the context of various health care fraud and abuse statutes. Generally, it has been interpreted broadly to include “anything of value.” The definition of “remuneration” for purposes of section 1128A(a)(5) - which includes waivers of coinsurance and deductible amounts, and transfers of items or services for free or for other than fair market value - affirms this broad reading. (See section 1128A(i)(6).) The use of the term “remuneration” implicitly recognizes that virtually any good or service has a monetary value.

Attachment(s):

Special Advisory Bulletin: Offering Gifts and Other Inducements to Beneficiaries

Special Advisory Bulletin: Gifts of Nominal Value To Medicare and Medicaid Beneficiaries

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