



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



December 7, 2016

**Office of Inspector General Policy Statement Regarding Gifts of Nominal Value
To Medicare and Medicaid Beneficiaries**

Under section 1128A(a)(5) of the Social Security Act (the Act), enacted as part of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), a person who offers or transfers to a Medicare or Medicaid beneficiary any remuneration that the person knows or should know is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier of Medicare or Medicaid payable items or services may be liable for civil monetary penalties (CMPs) of up to \$10,000 for each wrongful act. For purposes of section 1128A(a)(5) of the Act, the statute defines "remuneration" to include, without limitation, waivers of copayments and deductible amounts (or any part thereof) and transfers of items or services for free or for other than fair market value. See section 1128A(i)(6) of the Act. The statute and implementing regulations contain a limited number of exceptions. See section 1128A(i)(6) of the Act; 42 CFR 1003.110.

In the Conference Committee report accompanying the enactment of section 1128A(a)(5), Congress expressed its intent that inexpensive gifts of nominal value be permitted. See Joint Explanatory Statement of the Committee of Conference, section 231 of HIPAA, Public Law 104-191. The Office of Inspector General (OIG) expressed its interpretation of "inexpensive" or "nominal value" to mean a retail value of no more than \$10 per item or \$50 in the aggregate per patient on an annual basis, and noted that it would periodically review these limits and adjust them according to inflation, if appropriate. See, e.g., 65 FR 24400, 24411 (Apr. 26, 2000), available at: <https://oig.hhs.gov/authorities/docs/cmpfinal.pdf>, and Special Advisory Bulletin: Offering Gifts and Other Inducements to Beneficiaries, August 2002, available at: <http://oig.hhs.gov/fraud/docs/alertsandbulletins/SABGiftsandInducements.pdf> (Special Advisory Bulletin).

The OIG believes that the figures from 2000 should be adjusted. Thus, as of the date above, we are interpreting "nominal value" as having a retail value of no more than \$15 per item or \$75 in the aggregate per patient on an annual basis. As with our previous interpretation, the items may not be cash or cash equivalents. If a gift has a value at or below these thresholds, then the gift need not fit into an exception to section 1128A(a)(5). We will continue to monitor these thresholds and will announce any future increases, if appropriate.