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## Beware Professional Courtesies

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Many health care practices or facilities waive or discount co-pays or deductibles for other physicians, the physician's family members, or the physician's staff as a "professional courtesy." Although often well-intentioned, such practices can violate state and federal laws and managed care contracts.

**Courtesies to Referring Physicians.** Giving professional courtesies to a physician<sup>1</sup> or their family members will violate the federal Stark law<sup>2</sup> if the physician refers certain designated health services<sup>3</sup> payable by Medicare or Medicaid unless specific regulatory standards are satisfied, including the following:

1. The courtesy is offered by entities with a medical staff, which includes group practices, hospitals, and similar entities. Solo practitioners do not qualify.<sup>4</sup>
2. The entity has a written professional courtesy policy approved in advance by its governing body.
3. The courtesy is offered to all physicians on the entity's medical staff or in the entity's local community regardless of the volume or value of referrals between the parties.
4. The courtesy is not offered to anyone who is a federal health care program beneficiary unless there is a showing of financial need.<sup>5</sup>

Stark law violations require repayment of amounts received from Medicare and Medicaid for services rendered or items provided per improper referrals. Additional administrative penalties may apply.<sup>6</sup>

**Courtesies to Induce Referrals.** Even if an arrangement satisfies Stark, it may still violate state and federal anti-kickback statutes if offered to induce referrals. The federal Anti-Kickback Statute prohibits soliciting, offering, or giving remuneration to induce referrals for items or services covered by federal health care programs, including Medicare or Medicaid.<sup>7</sup> Similarly, the federal Civil Monetary Penalties Law prohibits offering inducements to federal program beneficiaries, including waiving co-pays and deductibles absent a showing of financial need.<sup>8</sup> Violations of the federal statutes may result in significant criminal and administrative penalties. State anti-kickback laws may also apply.<sup>9</sup>

**Courtesies to Patients with Private Insurance.** Even if no government health care programs are involved and there is no intent to induce referrals, state laws and managed care contracts may still prohibit waiving co-pays and deductibles. For example, Idaho Code § 41-348 prohibits engaging in a regular practice of waiving or rebating deductibles.

Violations may result in a \$5000 fine. In addition, most managed care contracts require providers to collect co-pays and deductibles; failure to do so may breach the contract. Blue Cross of Idaho recently sent a letter to providers warning of such actions.

**The Bottom Line.** Given the foregoing statutes, providers should ensure that their professional courtesy policies comply with the following:

1. If the courtesy is offered to a physician who refers designated health services, make sure you have a written professional courtesy policy that satisfies the Stark law regulations.
2. If private insurance is involved, do not waive or discount co-pays or deductibles unless there is a documented showing of financial need or you obtain permission from the health insurer.
3. Never offer professional courtesies as a way to induce referrals.
4. If you offer a professional courtesy, it is generally safer to waive the entire fee than to waive co-pays and deductibles.<sup>10</sup> The government and private payors are not as concerned if they are not required to pay for the service; however, you still need comply with Stark.

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<sup>1</sup>Under Stark, a "physician" includes M.D.'s, D.O.'s, podiatrists, dentists, optometrists, and chiropractors. 42 C.F.R. § 411.351.

<sup>2</sup>42 C.F.R. § 411.353.

<sup>3</sup>Under Stark, "designated health services" include the following services payable by Medicare: inpatient and outpatient hospital services; outpatient prescription drugs; clinical labs; physical, occupational, or speech therapy; radiology and certain imaging services; radiation therapy and supplies; durable medical equipment and supplies; parenteral and enteral nutrients, equipment, and supplies; prosthetics and orthotics; and home health services. 42 C.F.R. § 411.351.

<sup>4</sup>72 F.R. 51064.

<sup>5</sup>42 C.F.R. § 411.357(s).

<sup>6</sup>42 C.F.R. § 411.353.

<sup>7</sup>42 U.S.C. § 1320a-7b(b).

<sup>8</sup>42 U.S.C. § 1320a-7a(a)(5).

<sup>9</sup>See, e.g., Idaho Code § 41-348.

<sup>10</sup>OIG Compliance Program Guidance for Individual and Small Group Physician Practices, 65 F.R. 59447.