

GIFT GIVING and REFERRAL SOURCES



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Day 1 Session 3

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THE PSYCHOLOGY OF GIFT GIVING

Personal Gift Giving

- Appreciation.
- Attraction.

Professional Gift Giving

- Appreciation.
- Influence.
- Obligation.
- Power.

Lobbyists & Other Salesmen Gifts

- Meals.
- Attention.
- Obligation.

Case Study - Tallahassee





HOME HEALTH FUNDAMENTALS

KNOWLEDGE • EXPERTISE • COMMON SENSE

MOTIVE

- Vendors want goodwill.
- Providers rely on referral sources to feed them.
- Can you be “bought” with lunch?
- Unconscious motivations – humans like to reciprocate.



Compliance Overview

- Why are we talking about this?
- Compliance is driven by an effort to fix a fundamentally flawed structure.
- What is the root cause of nearly all things in compliance?
- Fee for service.
- In Healthcare: Fee for service is the root of all (or nearly all) evil.
- Why? Because it incentivizes the provision of unnecessary services.



**COMPLIANCE IS ABOUT THE
ENDLESS TUG OF WAR BETWEEN
DOCTORS, PATIENTS AND PAYORS.**



THE TRIANGLE (PART I)

- Doctor – Patient – Payor
- Disconnect between the patient and the services ordered by their Doctor.
 - Knowledge – Medical science is complicated.
 - Cost – usually – someone else is paying the bill (or at least the biggest part of it).
- Consumer is not knowledgeable and is at least somewhat insensitive to cost. We trust and hope in our Doctor.



THE TRIANGLE (PART II)

- Disconnect between the Doctor and the payor
- Knowledge – Medical science is complicated.
- Cost – Someone else is paying the bill.
- Doctor wants to be paid for his/her services.
- Payor wants to pay less for services.
- For commercial (for profit) payors.
- Premiums – Costs = Profit
- For government payors – Budgets are limited – whatever we spend on one we can't spend on another.
- Unnecessary services cost lives.
- Giving back on someone else's nickel.

Stark & Anti-Kickback Statutes

- Recoupment.
- It's as much a sin to receive as it is to give.
- Gift giving – How little is too much? (To give or receive).
- Examples of gift giving exceptions Stark and Anti-Kickback.
- Stark Law and Rules – Exception for meals and gifts to Doctors.
- Anti-Kickback Safe Harbor – Donations to Federally Qualified Health Centers.

False Claims Act – Improperly Motivated/Medically Unnecessary Services are Unlawful

Extremely Broad Definition of “False Claim”.

The FCA provides that any person who knowingly submits a false claim is liable for treble damages to the government, plus a penalty of \$2,000.00 for each false claim.

Case Study: Internist, IRS and Medicare.

EXTREME RECIPROcity

THE ANTI-KICKBACK STATUTE

- Criminal offense to pay or receive any remuneration to induce referrals for services reimbursed by Federal health care programs.
- “Remuneration” includes the transfer of anything of value, in cash or in-kind, directly or indirectly.
- Any arrangement where one purpose of the remuneration is to induce referrals.
- Felony with a maximum fine of \$25,000, imprisonment up to five years, or both.
- Automatic exclusion from Federal health care programs, including Medicare and Medicaid.
- OIG may also impose civil monetary penalties.

CASE STUDIES – HOME HEALTH CARE KICKBACK SCHEMES

Owner of Miami Home Health Care Agency busted for \$30 million Medicare fraud scheme, ordered to pay \$21 million in restitution. Kickbacks and bribes to patient recruiters who provided patients and prescriptions, plans of care and certifications for medically unnecessary therapy and home health services. January, 2015.

Home Health Company owner led \$450,000 Medicare kickback scheme (FBI). Payments to outside marketer in exchange for elderly patient referrals for medically unnecessary home health services. Contract with marketer stated she would be paid on an hourly basis. Agreement was cover for scheme. December, 2015.

Village Home Care, CEO and 2 doctors pay \$490,000 to resolve false claims act allegations for paying and receiving kickbacks in the form of sham Medical Director Agreements & sham Sublease Agreements, in exchange for patient referrals. May, 2023.

BUSINESS AS USUAL MORE SUBTLE EFFORTS TO INFLUENCE MEDICAL DECISION MAKING

Gifts & Meals

Medically Unnecessary Services = Recoupment

Case Study: Neurologist, Drug Rep and Reporter.



Exceptions to Stark

Medical Staff Exception for Nonmonetary Compensation

- Maximum of \$300 per calendar year.
- No relation to volume or value of referrals.
- Adjusted each year by the Consumer Price Index.
- Inadvertent compensation in excess of the limit – OK if –
- No more than 50% of the limit;
- Physician returns the excess by same calendar year or within 180 days, whichever is earlier.
- Excess forgiven one time every 3 years per physician.
- Hospital may provide one medical staff appreciation event per year. Any gifts or gratuities for the event are subject to the limit.

CALENDAR YEAR	Non-monetary compensation limit accordance with §411.357(k)	Medical staff incidental benefit in accordance with §411.357
CY 2023	\$489.00	Less than \$42.00

Gifts to Federal Health Centers

- Made pursuant to a contract, in writing, signed by the parties:
- All goods, items, services, donations, or loans.
- May not be conditioned on the volume or value of business between the parties.
- Directly related to services provided by the health center (for example billing services and case management or transportation services).
- Contribute to the services for medically underserved.
- Annually re-evaluate the arrangement.
- No requirement to refer patients.
- Available to all patients regardless of patient's payor or ability to pay.
- Health center can accept donations from other providers or suppliers or donors.
- Patients have freedom to choose other providers or suppliers.
- Patients charged same as other patients not referred by the health center.

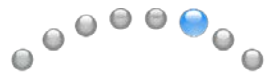


PARTING THOUGHTS

- When the sales rep comes calling – there is an agenda.
- Keep your power and integrity. Refuse the gift and the free lunch. Don't offer the gift or free lunch.
- Beware of referral sources who solicit gifts or seem too happy to receive gifts. Personal Ethics = Professional Ethics. "I don't like him, but he's a good doctor." A bad association will bring trouble.
- How to thank a referral source:
- A good referral source just wants to know you are taking care of the patients sent to you. Frequent reports, status, occasional consultation.
- The best way to say thank you, is to simply take care of their patient. Make the Doctor look good, caring.
- Reassure the patient and their loved ones that the placement was appropriate. Lawsuits are about neglect and a feeling of disrespect – failure to care.



Questions?



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