



**OIG Releases Special Advisory Bulletin  
on  
Gifts and Inducements to Beneficiaries**

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Earlier today, August 29, 2002, the Office of Inspector General (OIG) released a Special Advisory Bulletin regarding the offering of gifts and inducements to Medicare and Medicaid beneficiaries. Under the anti-kickback statute and 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 money penalties of up to \$10,000 for each wrongful act. Given the broad language of this prohibition and the wide range of marketing practices potentially affected, the OIG released the Special Advisory Bulletin to alert the health care industry as to the scope of acceptable practices.

The Special Advisory Bulletin provides the following bright-line guidance:

- Inexpensive gifts (other than cash or cash equivalents) or services that are not in excess of \$10 each or \$50 aggregate annually per patient may be offered to beneficiaries.
- Beneficiaries may be offered a more expensive item or service so long as it fits within one of five statutory exceptions:
  - It is a non-routine, unadvertised waiver of copayment or deductible amounts based on an individualized determination of financial need or exhaustion of reasonable collection efforts.
  - It is a properly disclosed differential in a health insurance plan's copayment or deductibles (such as an incentive that is part of a health plan's design, such as lower copay for using preferred providers, mail order pharmacies, or generic drugs).
  - It is an incentive to promote the delivery of preventive care and such incentive is not in the form of cash or cash equivalent and is proportionate to the preventive care provided.
  - It is permitted under an anti-kickback statute safe harbor.

- It is a waiver of copayment amount in excess of the minimum copayment amounts under the Medicare hospital outpatient fee schedule.
- The OIG is considering two additional regulatory exceptions (and are soliciting comments) on complimentary local transportation offered to beneficiaries residing in the provider's primary catchment area and free goods in connection with participation in certain government-sponsored clinical trials.
- The OIG will continue to respond to requests for advisory opinions related to this prohibition on inducements to beneficiaries.

If you have any questions regarding this Special Advisory Bulletin, you may contact Susan Koch at (713) 752-4328 or Jed Morrison at (210) 978-7780.