

Patient Inducements: The New Dos and Don'ts

The limits on giving free goods and services to Medicare and Medicaid patients are complex. Here's how to avoid regulatory trouble.

Providing patients with free items and services, such as an educational video or transportation to an appointment, could be part of a successful strategy to help patients improve their health. However, the federal government



is wary of health care groups using these “inducements” to steer Medicare and Medicaid patients toward specific providers or products, and it can impose strict penalties on those who do, including fines, jail time, civil money penalties, and exclusion from future participation in federal programs.¹

Regulators do not have to demonstrate that a gift was intended to influence a patient's choice of provider, only that the donor knew or should have known that the gift would “likely” influence it.

ABOUT THE AUTHOR

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According to the regulations, mentioning the gift in advertising or marketing would suggest inducement, and so would indirect promotion of gifts by word of mouth.

Government regulations released in 2002 and updated in 2016 established parameters for permissible inducements. This article describes how physicians can give Medicare and Medicaid patients items and services of value without running afoul of the law.

THE NOMINAL VALUE EXCEPTION

The Office of the Inspector General (OIG) in 2002 provided some initial guidance by announcing that physicians and other health care providers could offer gifts of “nominal value” without restrictions. It defined “nominal value” as having a retail worth of \$10 or less per gift up to an annual limit of \$50 per patient and specified that cash or cash-equivalent items are not permitted. These rules also approved waiving copays based on financial need, as well as providing certain preventive care services at no charge. But these exemptions were restricted to prenatal services, postnatal well-baby services, and services recommended by the U.S. Preventive Services Task Force, such as blood pressure screenings.

In 2016, the OIG raised the “nominal value” amounts to \$15 per gift and an annual limit of \$75 but issued no additional substantive analysis of how physicians could operate under the nominal value exception. Since then, regulators have also created three new exceptions detailed in this article and specified no dollar limits for them.

LOCAL TRANSPORTATION EXCEPTION

Physicians and other providers may offer free local transportation to patients in certain circumstances, according to the “safe harbor” regulations under the federal Anti-Kickback Statute. The exception defines “local” as transporting patients within 25 miles of the physician in an urban area and within 50 miles in a rural area. The transportation may be provided only to patients who are considered established to both the entity offering the transportation as well as the provider, and the patient must be seeking medically necessary services. You may not advertise the transportation service,

although the vehicle may display signs that show who is providing the service.

You will need to create a transportation policy that details criteria for how and when transportation is provided and uniformly apply the policy. For example, you may want to provide rides home for patients who have had a procedure that could make driving dangerous or round-trip transportation for patients who have a history of missed appointments. If your transportation service is need-based, your policy should specify how that need is determined.

You can use a third-party transportation service, but you cannot pay on a per-patient basis. If a patient wants to use public transportation, such as a taxi or city bus, you can offer the patient a voucher or reimburse the expense based on a receipt. You can offer to transport patients to other physicians you refer them to, but you cannot limit transportation service to just one physician.

The regulations are different for transportation by shuttle, which is defined as “a vehicle that runs on a set route on a set schedule.”² Shuttle services can be offered to both new and established patients as well as visitors and employees. The service may not be marketed or advertised, and the 25- and 50-mile boundaries apply.

PROMOTING ACCESS TO CARE EXCEPTION

The rules allow physicians to offer “remuneration,” or items or services that promote access to care and pose a low risk of harm to patients and federal health care programs.³ ▶

KEY POINTS

- Federal regulations strictly define the type and value of free goods or services physicians can provide to patients to avoid improper influence on the patient’s choice of health care provider.
- Violating these “inducement” rules can lead to fines, imprisonment, civil money penalties, and exclusion from participating in federal health care programs.
- Physicians may offer goods or services of “nominal value” with no restrictions – generally, items that are worth \$15 or less and do not add up to more than \$75 a year per patient.
- Other exceptions include offering local transportation to patients, providing goods or services that improve the patients’ access to preventive care, and assisting patients who have financial need.

This can include items or services that help patients to overcome socioeconomic, educational, geographic, mobility, or other barriers that prevent them from accessing preventive care or completing a treatment plan. To qualify for the exception, the service must be covered by Medicare or a state health care program. Items or services that promote access to non-covered services, such as elective cosmetic surgery or experi-

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mental treatments, would not qualify.

Cash or cash equivalents such as free dinners, movie tickets, or debit cards are not allowed. Again, no dollar limit was specified in the regulations, but the item or service must meet three criteria:

- It must be unlikely to interfere with or skew clinical decision-making,
- It must be unlikely to increase cost to federal health care programs or beneficiaries through either overuse or inappropriate use,
- It may not raise patient safety or quality of care concerns.

Items or services that promote access to healthy living, such as vacuum cleaners, air conditioner units, mattress covers, or food vouchers would not qualify under this exception.

Examples of goods and services that would qualify include the following:

- A blood pressure monitoring device,
- The purchase code for a smart phone app,
- Fees for participation in groups for smoking cessation, nutritional counseling, or disease-specific support,
- A web-based food and activity tracker for patients with diabetes,
- Child care for patients attending an educational program or appointment,
- A device that dispenses medications at a certain time,
- Parking fees.

Free educational materials are not covered by the exception but are not prohibited either because the OIG does not consider them to be “remuneration.”

FINANCIAL NEED EXCEPTION

A broader exception covers items or services given to patients with financial need. To qualify, several conditions must be met:

- The items or services given to patients are not advertised,
- They are not tied to the provision of other items or services reimbursed by Medicare or state health care programs,
- They are “reasonably connected” to the patient’s medical care,
- The patient must be in financial need.

For an item or service to be “reasonably connected” to the patient’s medical care, it must relate to the treatment and management of an illness or injury, preserve the patient’s health, or reflect services offered by a medical, dental, pharmacy, nursing, or allied health professional. The latter condition appears to be fairly broad.

For example, the regulations say you could offer incentives like a stroller or school supplies to patients who attend necessary preventive care appointments or give out infant car seats to help improve patient safety. Although toys typically are not connected to patient care, you could provide them to children with developmental delays or those recovering from certain illnesses or injuries that require therapy for fine motor skills. Distributing backpacks, on the other hand, would not be permissible because regulators do not consider them connected to medical care.

Incentives should generally not be disproportionately expensive compared to the value of the medical service. For instance, paying for a patient’s long-term meal plan, giving sports equipment to a child who needs exercise, or providing sporting event tickets or a spa gift card to a patient with anxiety or depression would not be protected. Giving compression stockings to a patient with diabetes, paying for meal deliveries for a limited time to a patient recently discharged following a debilitating procedure, or providing a free disease management program would qualify.

None of these protections are available

unless the patient has financial need. You must determine need through an individualized assessment, made in good faith on a case-by-case basis. No specific documentation is required, but regulators do expect that you have an established, uniformly applied policy. You cannot rely only on the patient's claim of financial need, and you must independently establish and document it, although regulators have not specified how.

CONCLUSION

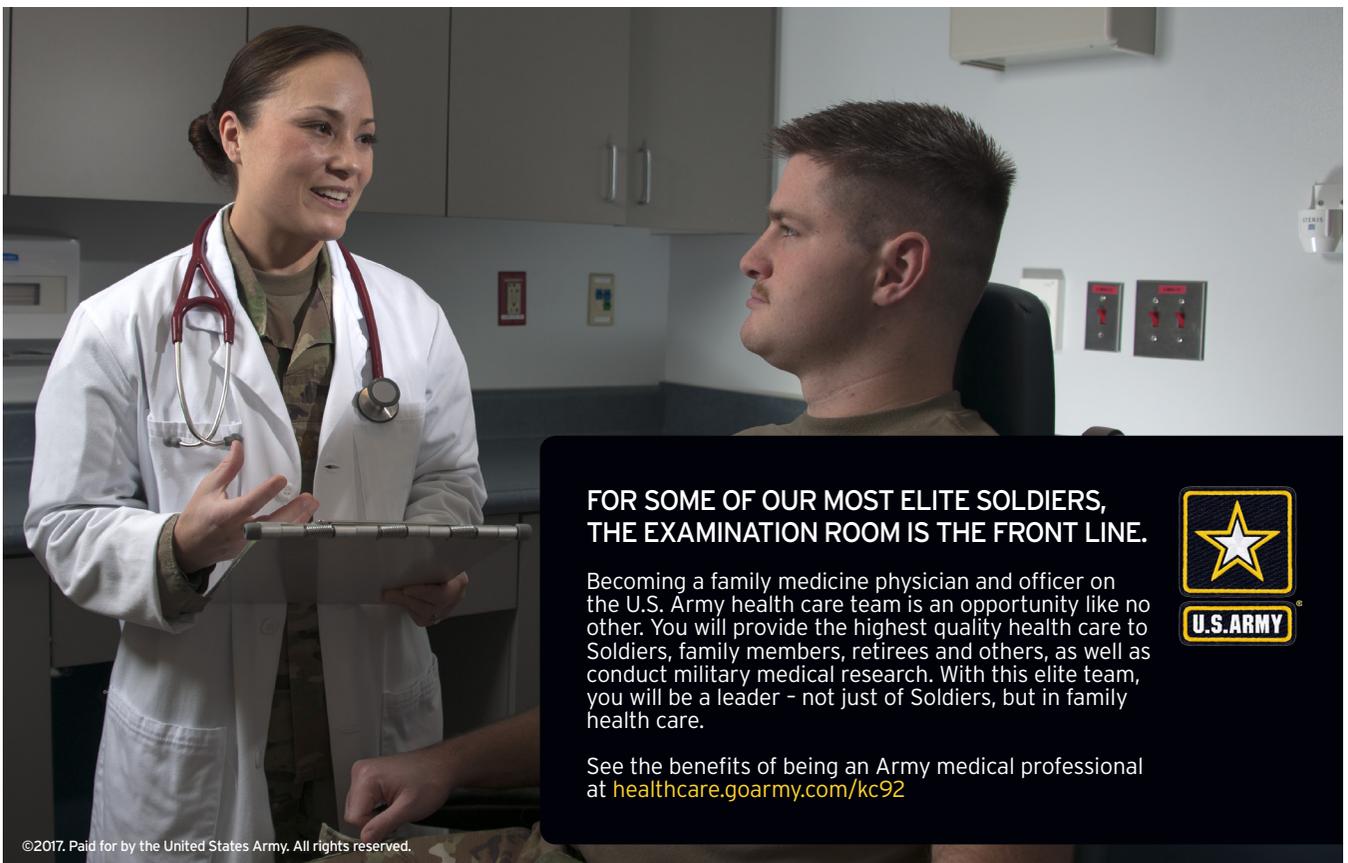
The regulations surrounding health care inducements are far more liberal than they used to be. Physicians have several opportunities in addition to the nominal value exception. Still, whether an inducement is permitted depends on context, facts, and circumstances. When you offer a free item or service, that decision should be based on clearly articulated

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policies, including who has the authority to determine if the gift is permissible. Legal counsel can assist with developing and implementing these policies. **FPM**

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1. U.S. Department of Health & Human Services. Civil Monetary Penalties. §1128A(a)(5); 42 CFR §1003.1000(a). https://www.ecfr.gov/cgi-bin/text-idx?SID=2b7ec19e7969fad0c83d3faebfd15242&mc=true&node=pt42.5.1003&rgn=div5#se42.5.1003_11000. Accessed June 4, 2018.
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