

OFFERING GIFTS AND OTHER INDUCEMENTS TO BENEFICIARIES

Introduction

The United States Health and Human Services Office of Inspector General (HHS OIG) has issued a Special Advisory Bulletin relating to offering gifts and inducements to beneficiaries of Title XIX programs.¹ This Advisory from the Texas Health and Human Services Commission Office of Inspector General (HHSC OIG) clarifies how HHSC OIG interprets and applies the rules and statutes applicable to providing things of value to Title XIX benefit recipients.

HHSC OIG understands the competitive market and business practices of providers, and providers' perceived necessity to separate themselves in the mind of potential clients and patients. At the same time, HHSC OIG is responsible for insuring integrity and fairness in Title XIX in Texas and is mindful that gifts and other consideration offered by providers may raise concerns in both the provider and general communities about the quality of care, cost of care and necessity of care offered.

HHSC OIG is responsible for enforcing 1 Texas Administrative Code §371.1669, which prohibits a person from transferring or offering any remuneration which the person knows or should know is likely to influence the beneficiary's selection of a provider, practitioner or supplier of Medicaid payable items or services.

HHSC OIG Application and Guidance

HHSC OIG is aware of the August 2002 HHS OIG Special Advisory Bulletin addressing the analogous federal provision, section 1128A(a)(5) of the Social Security Act, and incorporates that Special Advisory Bulletin's discussion of facts and law to the extent it does not conflict with any guidance provided to Texas Title XIX program participants contained in this Advisory.

The state administrative rules set forth a stricter compliance standard than that contained in the August 2002 HHS OIG Special Advisory Bulletin. By this Advisory, providers are specifically put on notice HHSC OIG will enforce the state administrative rules and apply certain bright line rules that are more stringent than HHS OIG. Compliance with the federal standard may not be sufficient, depending on facts and circumstances, to avoid HHSC OIG enforcement actions, including administrative sanctions.

1. HHSC OIG interprets the prohibitions in 1 TAC §371.1669 to prohibit providers from offering beneficiaries any items or services to influence or induce their health care decisions. HHSC OIG presumes that in most instances, items that do not exceed \$10 individually and \$25 in the aggregate annually per patient were not provided to influence a beneficiary's decisions.
2. Any items a provider offers to a beneficiary must be directly related to the provider's profession. For example, a dentist may offer tooth decay prevention items (a toothbrush, toothpaste, floss

¹ "Offering Gifts and Other Inducements to Beneficiaries," Office of Inspector General Special Advisory Bulletin, August, 2002.

and similar items) each visit. Although they may be well-meaning, items such as backpacks, school supplies and similar items are not permissible.

3. Cash, cash equivalents and gift cards in any amount, even if directly related to the provider's profession, are never permissible. For example, a gift card to a discount store is impermissible, even if offered by a dentist and restricted to the purchase of dental items.

Transportation of beneficiaries that otherwise complies with applicable federal and state statutes and rules is permissible, but only if the provider offers it to a beneficiary through the Medicaid Transportation Program to meet a temporary need. It is never permissible for a non-transportation provider to advertise or offer transportation services as a benefit to selecting that provider for other services. HHSC OIG will evaluate the purpose behind the transportation by evaluating facts and circumstances. For example, a provider who frequently transports beneficiaries or who owns vans for that purpose will likely experience greater scrutiny than one who provides transportation infrequently. To the extent other guidance contained in the HHS OIG Special Advisory Bulletin does not conflict with this guidance, HHSC OIG will implement it.

Managed Care Organizations will be governed by standards of conduct contained in their contracts with the Health and Human Services Commission and in conformity with [42 CFR §438.104](#) and Texas Government Code [§533.008](#). Where their actions are not specifically authorized or prohibited, this guidance will apply.

CONCLUSION

HHSC OIG recognizes regulations in Title XIX programming can be confusing and contradictory. To the extent providers have violated an exception contained in this guidance or in the HHS OIG Special Advisory Bulletin, HHSC OIG will exercise its discretion and consider appropriate mitigating factors in determining what, if any enforcement action to bring. Mitigating factors as set out in 1 TAC §371.1603(f) may include: intent, prompt termination of the impermissible act, extent and nature of the violation, and similar factors.