

## Enforcers Target Discharge Planners/Case Managers Yet Again

Case managers/discharge planners continue to come under fire from fraud enforcers for violations of the federal anti-kickback statute. This statute generally prohibits anyone from either offering to give or actually giving anything to anyone in order to induce referrals. Case managers/discharge planners who violate the anti-kickback statute may be subject to criminal prosecution that could result in prison sentences, among other consequences.

A U.S. District Judge in California sentenced an owner of a post-acute provider to eighteen months in prison for one count of conspiracy to commit health care fraud and one count of conspiracy to pay and receive health care kickbacks. From July of 2015 through April of 2019 the provider paid and directed others to pay kickbacks to multiple case managers/discharge planners for referrals of Medicare patients, including employees of health care facilities and employees' spouses. Recipients of the kickbacks included a discharge planner/case manager at a hospital, and discharge planners at skilled nursing and assisted living facilities.

Payments of kickbacks resulted in over eight thousand claims to Medicare for patients referred to the provider. Medicare paid the provider at least two million dollars for services provided to patients referred in exchange for kickbacks. Because the provider obtained patient referrals by paying kickbacks, the provider should have not received any Medicare reimbursement. The discharge planners/case managers who received kickbacks from the provider also pled guilty and will be sentenced soon.

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS), the primary enforcer of fraud and abuse prohibitions, says that discharge planners/case managers and social workers cannot accept the following from providers who want referrals:

- Cash
- Cash equivalents, such as gift cards or gift certificates
- Non-cash items of more than nominal value

- Free discharge planning services that case managers/discharge planners and social workers are obligated to provide

Discharge planners/case managers and social workers provide extremely important services that are valued by many patients and their families, but their credibility and trustworthiness is destroyed when they make referrals based on kickbacks received.

A word to managers and all the way up the chain of command to CEOs: whether or not you know when case managers/discharge planners accept kickbacks, the OIG may also hold you responsible. You may be responsible if you knew or *should* have known. The OIG has made it clear that your job is to monitor and to be vigilant. A good starting point is to put in place a policy and procedure requiring discharge planners/case managers to report in writing anything received from post-acute providers. Even better, how about a policy and procedure that prohibits *all* gifts?

Now a word to post-acute marketers: do not give kickbacks to discharge planners/case managers and social workers. It is simply untrue that you must give kickbacks in order to get referrals. The proverbial bottom line is: Do you like the color orange? Is an orange prison uniform your preferred fashion statement? Please stop now!

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