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Client Alert: Gift Giving Risks for Health Care Providers to Keep in Mind this Holiday Season

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Happy Holidays!

As we approach the Holiday Season, we all know that this is the time when gifts are exchanged. For health care providers, it can be a season of risk. Gifts to referral sources can be a problem, and leaders and compliance professionals need to be aware of the pitfalls that this season brings.

For health care providers who are involved in Designated Health Services (as defined in the Stark law), providers need to be aware that the non-monetary compensation exception allows for certain limited gifts to physicians (and the family of such physicians) who are referral sources. For 2021, there was a limit of $429 per calendar year, and for those thinking about the New Year, the cap for 2022 will be $452. Such gifts however, cannot be in the form or cash or cash equivalents (for example, gift cards that can be converted to cash). Moreover, these gifts cannot be determined based on the volume or value or referrals or generation of other business. Finally, the gift cannot be solicited by the physician or physician's practice.

Similarly, this is an important time to check on who has been compliant in 2020 by making sure that you have not exceeded the gift thresholds for 2020. There are limited opportunities to correct any "over-gifting" for 2020. We can provide counsel for the early review of what occurred in 2020 should you need assistance in this area.

However, be aware that there are no gift exceptions for the Eliminating Kickbacks in Recovery Act (EKRA) and so it is recommended that health care providers do not give or receive gifts from labs, recovery homes, or clinical treatment facilities.

Additionally, this is the time to remind all staff of your entity's specific gift policy. While there will be some who are not happy to be reminded, we must work on having a compliant culture all year round.

While the above is not intended to be a comprehensive list of gift giving risk, it is a starting point for entry into a new calendar year.

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