



John Kasich, Governor
John L. Martin, Director



To: CBMR/DD Superintendents
COG Directors
SSA Directors
Providers

From: LEGAL
Kelly Miller, Assistant Deputy Director
Office of Provider Standards and Review
Division of Legal and Oversight

Date: May 10, 2011

Re: Inducements and Free Choice of Provider

Individuals in our state benefit from an array of service options and the right to choose a qualified and willing provider to meet their individualized needs. Ohio Administrative Code 51232:-9-11 outlines the Department's role in assuring the free choice of provider process is adhered to and emphasizes the right of individuals to choose. We take this responsibility very seriously and provide this information notice with these purposes in mind: 1) It provides references to provisions in the Ohio Administrative Code (rules) and the Social Security Act, enacted as part of Health Insurance Portability and Accountability Act of 1996 (HIPAA) and how to best comport with those requirements; 2) County boards and providers should use this information to review their policies and procedures for supporting individuals through the free choice of provider process 3) to address the increased number of complaints that individuals are being offered inducements.

Section 1128A(a)(5) of the Social Security Act outlines that it is in violation of federal law to offer valuable gifts to beneficiaries to influence their choice of Medicaid or Medicare providers. The statute defines this activity as "remuneration" to include, without limitation, waivers of copayments and deductible amounts (or any part thereof) and transfers of items or services for free or other than fair market value. The statute and implementing regulations contain a limited number of exceptions.

Some highlights include:

- OIG has interpreted the prohibition to permit Medicare or Medicaid providers to offer beneficiaries inexpensive gifts (other than cash or cash equivalents) or services without violating the statute. For enforcement purposes, inexpensive gifts or services are those that have a retail value of no more than \$10 individually, and no more than \$50 in the aggregate annually per patient.
- Providers may offer beneficiaries more expensive items or services that fit within one of the five statutory exceptions: waivers of cost-sharing amounts based on financial need; properly disclosed copayment differentials in health plans; incentives to promote the delivery of certain preventive care services; any practice permitted under the federal anti-kickback statute pursuant to 42 CFR 1001.952; or waivers of hospital outpatient copayments in excess of the minimum copayment amounts.

Examples of Inducements:

- Individuals are offered a \$50 bonus if they refer a friend to the day program and they stay for 6 months
- A residential provider promises to pay an individual cell phone bill every month if they chose them as a provider
- An advertisement in the local paper reads that an individuals will receive a color TV for filling out a referral for residential services
- A provider tells a person that they will be paid \$5 a week for attending their day service

Attached is a helpful bulletin from the Office of the Inspector General for your reference. If you have any questions, please contact Brad Singer, Office of Legal Services at 614-728-2149 or Kelly Miller, Office of Provider Standards and Review at 614-728-2520.