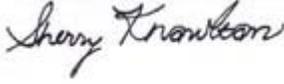


	MEDICAL ASSISTANCE BULLETIN COMMONWEALTH OF PENNSYLVANIA * DEPARTMENT OF PUBLIC WELFARE	
	SUBJECT Business Arrangements Between Nursing Facilities and Pharmacy Providers	BY  Sherry Knowlton Deputy Secretary for Medical Assistance Programs
NUMBER:	19-93-16, 25-93-01, 35-93-03, 36-93-03, 1101-93-05	
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PURPOSE:

The purpose of this bulletin is to discuss the interpretation of 55 Pa. Code §1101.75(a)(3) regarding possible kickback relationships between nursing facilities and pharmacy providers.

SCOPE:

This bulletin applies to all nursing facilities and pharmacy providers.

STATEMENT OF POLICY
CHAPTER 1101 - GENERAL PROVISIONS
§1101.75. Provider Prohibited Acts.

BACKGROUND:

Section 1407(a)(2) of the Public Welfare Code (62 P.S. §1407(a)(2)), and 55 Pa. Code §1101.75(a)(3), Medical Assistance General Provisions, make it unlawful for any person to:

Solicit or receive or to offer to pay any remuneration, including any kickback, bribe, or rebate, directly or indirectly, in cash or in kind, from or to any person in connection with the furnishing of services or merchandise for which payment may be made in whole or in part under the Medical Assistance Program or in connection with referring an individual to a person for the furnishing or arranging for the furnishing of any service or merchandise for which payment may be made in whole or in part under the Medical Assistance Program.

The purpose of the law and the regulation is to eliminate fraudulent, abusive, and deceptive practices that may occur and to ensure that public funds will be properly expended for essential services to medical assistance recipients.

DISCUSSION:

During the past few years, State and Federal criminal agencies have identified various kickback relationships, and providers involved in kickback relationships have been prosecuted. However, due to the increase in competitive pressures and creative marketing skills of certain providers, variations in the straight dollar-for-service kickback have arisen.

While the Department recognizes that anti-kickback statutes and regulations were created to prevent fraudulent and abusive practices, the statutes and regulations were not created to inhibit delivery of state-of-the-art pharmacy services. Therefore, the Department, through the Medical Assistance Advisory Committee, and in conjunction with an Ad Hoc Pharmacy and Nursing Facility Task Force made up of representatives of Pharmacy and Nursing Facility Sub-Committee, developed this bulletin to assist in preventing providers from offering or receiving improper kickbacks. The following listings, which are not all-inclusive, set forth examples of items and practices that would be considered accepted or improper under the Medical Assistance Program.

Accepted Practices General Statement

Ancillary enhancements that are solely confined to the practice of pharmacy as described in the Pharmacy Act, 62 P.S. §102 (11) and remain in the control and ownership of the pharmacy would be considered an accepted practice under Section 1407 (a)(2) of the Public Welfare Code and Medical Assistance Regulation §1101.75(a)(3).

Examples of Accepted Practices

1. Medication carts whether the pharmacy uses unit dose or standard prescription containers.
2. Treatment and medication forms that are already part of the pharmacy's software may be supplied to the nursing facility. However, the nursing facility must pay for the cost of paper.

Examples of Improper Practices

1. Cash or equipment in which ownership or control is changed.
2. Funding for parties. This includes, but is not limited to, money, food or decorations.
3. Vacation trips and professional seminars.
4. Free or below market value:
 - a. Pharmacy consultations which include, but are not limited to, reviewing charts, conducting education sessions, and observing nurses administering medication. (The market value of a pharmacy consultant's fee shall be no less than the average hourly wage of a pharmacist in that particular geographic area.);
 - b. drugs - legend or over-the-counter (OTC's)*;
 - c. intravenous drugs, tubing or related items*;
 - d. drugs for emergency carts*;
 - e. facsimile machines. (This is not to preclude the use of facsimile machines. The State Board of Pharmacy will continue to regulate the proper use of facsimile machines. The prohibition includes a pharmacy placing by loan, gift or rental a facsimile machine in a nursing facility for the purpose of transmitting MA prescriptions.);
 - f. treatment or external medication carts. (This does NOT include medication carts used exclusively to store drugs whether dispensed in a container or unit dose.);
 - g. computers and software;
 - h. medical or pharmacy books and journals;
 - i. prescriptions for nursing facility staff;
 - j. administrative functions which include, but are not limited to, billing, payroll and nursing facility report preparation. (This does not include reports regarding drug usage.); and
 - k. staff to perform nursing facility functions outside of the practice of pharmacy.

* For the purpose of this bulletin the Department will accept a volume discount as market value if it remains equal to or above the Actual Acquisition Cost (AAC) of the product.

POLICY:

Providers shall not solicit, receive, offer to pay any remuneration, including any kickback, bribe, or rebate, directly or indirectly, in cash or in kind, from or to any person in connection with furnishing of services or items or referral of a recipient for services and items.

PROCEDURE:

Pharmacy providers and nursing facilities should review their business arrangements to determine if they are in compliance with regulations and these guidelines. Violations of 62 P.S. 1407(a)(2) and 55 Pa. Code 1101.75(a)(3) are considered serious violations which may lead to criminal prosecution and are violations which may also affect a provider or person's future participation in the MA Program.

It is important to understand that if an improper relationship exists, both parties are responsible, and that the corporate officers of non-profit entities also may be held accountable.

Pharmacy providers and nursing facilities must ensure that recipients be given a freedom of choice. Therefore, business relationships between nursing facility and pharmacy providers which preclude freedom of choice by recipients are prohibited.

The Department recommends that providers involved in contract negotiations should document the spirit and intent of issues discussed.

Please be advised this bulletin is only meant to assist in preventing providers from entering into improper relationships. The final determination of any improprieties will be a review of the contract in relationship to the Medicaid Fraud Statute 62 P.S. §1407.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

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Visit the Office of Medical Assistance Programs website at www.dpw.state.pa.us/omap.