

PATIENTS, GIFT CARDS, AND REGULATIONS

Q: Would you address the anti-kickback statute prohibiting a practice from offering freebies for cosmetic related services? It is not uncommon for cosmetic patients to see providers for non-cosmetic related services. Does the fact that the patients are classified as both cosmetic and medical mean that a practice could run into anti-kickback implications if they offer, for example, a \$50 gift card for having the cosmetic service? Also should the practice be concerned about the anti-kickback statute when offering a reward program?

A: Your question identifies an interesting and complex area of the law. Practices that participate in a program such as Medicare are prevented from providing financial incentives to either to secure patients or to have patients to receive additional services. This clearly means you cannot offer a \$50 gift card to your medical patients.

Let's assume your practice is restricted to private pay individuals. You still have some issues with using gift cards for marketing purposes. For example, you cannot offer an existing patient \$50 for every new patient they bring to your practice. This would be seen as an ethical violation by the State Boards of Medicine and could be considered fee-splitting with a non-physician.

The issues do not end there. The Federal Trade Commission also has guidelines for compensated endorsers. This means that if you are compensating a patient, you must disclose that fact. Remember Ed McMahon and Publisher's Clearing House? On the television screen, Ed McMahon's balloons and 5 foot check was writing that said he was a compensated endorser of Publisher's Clearing House. Most recently these laws have been enforced against bloggers who accepted compensation and product discounts in exchange for positive postings.

Although marketing private pay services and procedures is somewhat of a mine field, it can be done legally. Karen Zupko from the firm Karen Zupko & Associates helps practices with this area. "The issue of incentives is interesting and common in many aesthetic practices," says Ms. Zupko. Offers such as "Buy a series of 3 and get the 4th free!" or "sign up for this and we'll give you something," may attract some patients. But Zupko says the real question is "Do these incentive keep patients loyal and coming back?" The answer may surprise you. "All of the sales literature shows that business that is 'bought' does not engender loyalty," cautions Zupko. Ultimately, you have to decide what is right for your practice. "Be thoughtful in what you offer, and, remember, tracking is mandatory!" Take this expert advice from Karen Zupko to heart and you will be on your way to safely and effectively marketing your practice.