

Report on Medicare Compliance Volume 30, Number 39. November 01, 2021

As Interest in SDOH Grows, Hospitals May Turn to CMP Exceptions, Privacy Rule Proposal

By Nina Youngstrom

As part of its initiative to increase education for at-risk populations, a hospital threw baby showers for low-income expectant mothers. The moms-to-be received takeaway baskets with diapers and other goodies to help them with their newborns only after they attended prenatal education classes. Although the program, a hypothetical, has good intentions, it could expose the hospital to risks under fraud and abuse laws, including the civil monetary penalty (CMP) law prohibiting beneficiary inducements.^[1] But there are fraud and abuse exceptions that allow hospitals to provide noncash goods and services that are nominal and/or promote access to care, and hospitals may increasingly capitalize on their availability as they address the social determinants of health (SDOH), said Danette Slevinski, chief compliance officer and HIPAA privacy program executive at University Hospitals in New Jersey. At the same time, doors may open wider for SDOH programs because of proposed revisions to the HIPAA privacy rule affecting care coordination and case management.^[2]

It would be important for the baby showers not to include giveaways of “diamond-studded diaper bags,” Slevinski said. But if the pregnant women received some basic necessities valued at less than a total of \$75, the items would likely fall within the exception for annual per-person gifts under the beneficiary inducement prohibition of the CMP law. To help properly structure a program like this, the hospital should review advisory opinions from the HHS Office of Inspector General on the provision of similar types of items to patients.

Reaching out to underserved populations directly or in partnerships with community-based organizations is key to addressing SDOH, which are coming into play more as evidence mounts that health outcomes and costs are affected by the way people live.

SDOH “is the idea that there are things outside of traditional blood tests, scans and stethoscopes that affect patient health, whether it’s where patients live and what they eat or access to care,” said New Jersey health care attorney John Barry. Impacting these things can lead to a healthier population that needs less care and less costly care, he said.

This document is only available to subscribers. Please [log in](#) or [purchase access](#).

[Purchase Login](#)