



TO: DODD Certified Adult Day and Employment Service Providers

SUBJECT: Payment in Adult Day and Employment Services Guidance

DATE: June 11, 2018

This guidance is intended to provide information to Department of Developmental Disabilities providers certified in adult day support, vocational habilitation, career planning, group employment supports, or individual employment supports on federal and state laws and rules that apply when someone is being paid while receiving Medicaid services.

Providers should always consider federal and state laws and rules regarding wages, inducements, and proper service delivery when making decisions on payments to beneficiaries. While the Department provides this guidance to help providers comply with the law, in a fee-for-service system, how a provider chooses to comply with federal and state law is up to them. It is important to note that the Department is not always the lead or sole agency responsible for enforcing the information within this guidance document.

The Centers for Medicare and Medicaid Services (“CMS”) has made clear that individuals participating in prevocational services may be compensated in accordance with federal law and regulation.¹ In Ohio, these services are provided through Vocational Habilitation.

Vocational Habilitation is a time-limited service that provides opportunities to learn and gain experience to develop skills that lead to competitive, integrated employment. The expected outcome of this service is to provide training that will advance someone on his or her path to community employment and ultimately achieving competitive, integrated employment in a job well-matched for that person. An individual receiving Vocational Habilitation must have community employment outcomes in his or her individual service plan.

CMS has made it clear that day habilitation services, Adult Day Support in Ohio, may not provide for the payment of services that are vocational in nature. Adult Day Support is expected to support an individual’s social development and performance of daily community living, not provide employment support. Individuals should not receive payment or wages for time periods when they are receiving Adult Day Support.

It is a violation of federal law to offer a Medicaid beneficiary an inducement. Section 1128A(a)(5) of the Social Security Act addresses inducements and makes it illegal to offer valuable gifts, or remuneration, to beneficiaries to influence their choice of Medicaid providers.² Inexpensive gifts of nominal value are permitted and the U.S. Department of Health and Human Services (“HHS”) Office of Inspector General has interpreted “inexpensive” or “nominal” value as having a retail value of no more than \$15 per item or \$75 in the aggregate per person on an

¹ [*Mann, Updates to the § 1915\(c\) Waiver Instructions and Technical Guide regarding employment and employment related services, CMCS Informational Bulletin \(September 16, 2011\).*](#)

² [*42 U.S.C. 1320a-7a\(a\)\(5\).*](#)

annual basis.³ Providers may offer beneficiaries more expensive items or services that fit within one of the statutory exceptions.⁴ **It is unlikely that any of these exceptions would apply to a provider of adult day services and none of these exceptions permit providing cash or cash equivalents to a beneficiary.**

Examples of improper inducements:

- Gifts/Incentives:
 - Providing cash or gift cards to individuals based only on their days of attendance at the worksite or service location.
 - Offering a bonus to an individual for referring an individual to a day program.
 - Entering individuals receiving services into drawings for gifts based on their days of attendance.
- Guaranteed pay:
 - Providing individuals with pay regardless of whether work is available or performed.
- Conditional pay:
 - Offering jobs or payment based on the condition that an individual use another service from the provider; for example, an individual will be paid a wage if he or she also uses the provider for transportation. This would be an inducement and interfere with an individual's free choice of provider.

A provider that violates the law faces serious penalties. A provider who violates this law may be liable for civil monetary penalties of up to \$10,000 for each wrongful act and HHS may initiate administrative proceedings to exclude the offending party from federal health care programs.⁵ This may also result in the provider's exclusion from state health care programs. Separately, the Department may issue a citation to an offending provider during a compliance review.⁶

Nothing in this guidance should be interpreted or construed to limit or remove the benefits of integrated community services for people enrolled in Home and Community Based Services. Certified providers, in compliance with the HCBS Settings rule, must continue to provide waiver

³ [*Office of Inspector General Policy Statement Regarding Gifts of Nominal Value to Medicare and Medicaid Beneficiaries, Department of Health and Human Services Office of Inspector General \(December 7, 2016\).*](#)

⁴ These exceptions include 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; waivers of hospital outpatient copayments in excess of the minimum copayment amounts; any other remuneration which promotes access to care and poses a low risk of harm to patients and federal health care programs; or retail rewards which are offered or transferred on equal terms available to the general public, regardless of health insurance status. [42 C.F.R. 1003.110.](#)

⁵ [42 U.S.C. 1320a-7a\(a\)\(5\).](#)

⁶ [Ohio Adm.Code 5123:2-2-04.](#)

services, including adult day support, vocational habilitation, career planning, group employment supports, or individual employment supports in a setting that is integrated in and supports full access to the greater community.

The Department wants to ensure that providers have access to this information in order to comply with federal and state law. Please use the references included in this document to further review and consider consulting legal counsel for additional questions.