

March 2020

- Q. Our medical center is receiving offers for free goods or services from organizations during the Covid-19 public health emergency. Can we accept them?
- A. In general, it is permissible for vendors who sell non-medical items or services to the medical centers to donate goods or services of less than \$50 in value per vendor to each medical center staff individual; gifts of higher dollar amounts to certain medical center leaders may require reporting under the Political Reform Act. It is also permissible only during the public health emergency for vendors who sell medical items or services to the medical center to donate goods or services of minimal value (\$10 per occurrence per individual) such as food or clothing to medical staff if they do not directly provide such goods or services to staff, do not select which staff receive the goods or services, the identity of the donor is not disclosed, and no other facts support that the donor's intent in making the donation is to increase orders of medical items or services from the vendor. The \$10 threshold does not apply to donations of personal protective equipment ("PPE"), as such donations are made to the medical center rather than to individual staff members; however, all of the other requirements above related to medical items or services vendors must still be met as to PPE. To ensure compliance with the requirement that donations not be made directly to staff, we encourage such donations to be made through the location's fundraising/gift processing office.

Background/Executive Summary

Due to the Covid-19 outbreak, UC medical centers are receiving offers from donations of products to health care providers, such as meals from restaurants, meal delivery vouchers from transport services, and shoes from shoe manufacturers and distributors. While donations from organizations such as these would be highly appreciated by medical support staff, UC must consider several laws and policies before accepting them, and evaluate how such laws and policies may impact how UC receives and disperses the donations to staff.

*****NOTE THAT THIS ADVISORY IS STRICTLY LIMITED TO ACCEPTING DONATIONS DURING THE COVID-19 PUBLIC HEALTH EMERGENCY*****

Law and Policies to Consider

Before accepting donations of any kind, UC medical centers should consider at a minimum, the following laws and policies:

1. Stark Law: ordinarily implicated if an organization that bills items or services to Medicare makes a gift (which together, along with other nonmonetary remuneration, exceeds \$423 in a calendar year) to a physician who orders such items or services. However, CMS [issued blanket waivers of the Stark Law](#) effective March 1, 2020, stating, absent a determination of fraud and abuse, it would not enforce the

Stark Law for any items or services to ensure that: (1) sufficient health care items and services are available to meet the needs of government beneficiaries; and (2) the donating organization acts in good faith but is unable to comply with the Stark Law due to the COVID-19 pandemic. Such waivers would thus cover, for example, donations by a health care entity to a UC physician of either PPE at no charge or of food or supplies which together with other nonmonetary remuneration exceeded \$423 in a calendar year. Thus, unless the donation was conditioned on future orders or referral, it is likely that any of the gifts contemplated above would be permissible under the blanket waivers.

Example Where UC May Accept the Donation:	Example Where UC May Not Accept the Donation:
Pharmaceutical company drops off free food to the medical center, identity of donor is not disclosed, physicians consume a meal valued at \$10 or less.	Pharmaceutical company informs a physician that they are providing a \$500 voucher to the physician for food delivery and provides the voucher to the physician.
Device company drops off PPE but there is no indication that the PPE was donated by the device company and the identity of the donor is not otherwise disclosed.	Device company drops off PPE at the medical center that is marked with the device company's logo.

2. **Anti-Kickback Statute:** implicated only if the medical center orders from the organization making the donation any items or services billed by the organization to Medicare or Medicaid and the organization's intent in making the donation is to induce referrals, i.e., increase such orders from the medical center. The Anti-Kickback Statute would generally prohibit such a donation. It is unlikely that there would be any intent to induce referrals if the donations were made during this public health emergency and the identity of the donor was kept confidential from anyone who might order items or services from the donor. It is also unlikely that either the Anti-Kickback Statute or Stark Law would be violated by a donation of personal protective equipment ("PPE") even from a Medicare or Medicaid referral recipient since such a donation would be made to the institution as a whole rather than individuals; so long as the confidentiality of the donor is not disclosed to those who order items or services from the referral recipient, there is little risk of the medical center rewarding the donor with increased orders.

Example Where UC May Accept the Donation:	Example Where UC May Not Accept the Donation:
Device company donates free meals to nurses and identity of donor is not disclosed.	Device company donates free meals to nurses and there is an announcement that the device company is the donor.

3. **Political Reform Act:** implicated only if the recipients are (i) annual Form 700 filers or (ii) in a position to make or influence UC's decisions regarding the types of purchases of goods and services it makes; and the donation is valued at \$50 or more per donor per UC employee. If implicated, it does not prohibit the donation, but could require the individual to report on their annual Form 700 or UC to report the donation on FPPC Form 801.

Example Where UC May Accept the Donation, without concern of reporting	Example Where UC May Accept the Donation, but must report:
Front line nursing staff receive shoes valued at \$30.	Medical center department chiefs receive meal vouchers valued at \$100

4. The Sunshine Act (“Open Payments”): implicated only if the organization is a pharmaceutical or medical device manufacturer. If implicated, it would only require the organization to disclose the donation in its reporting to CMS.

Example Where UC May Accept the Donation, without concern of reporting	Example Where UC May Accept the Donation, but organization must report:
Restaurant provides free meals to physicians and nurses.	Pharmaceutical company provides free meals to physicians and nurses.

5. UC Health Care Vendor Relations Policy: implicated when the donations are provided to health care workers by suppliers that provide any medical good or service including drugs and devices to UC’s medical center. The Policy prohibits such donations if they are directly made to medical center staff or if the donor selects who receives the donation. Thus, for example, if donations from a health care vendor are made through University’s advancement or fundraising department rather than individuals working at the medical center, and the donor is not otherwise publicized or identified, the Policy would permit such a donation. The Policy also would permit any donation from a vendor who does not sell or market any medical good or service to the medical center.

Examples Where UC May Accept the Donation:	Example Where UC May Not Accept the Donation:
High-end restaurant provides free meals to hospital staff, and meals are dropped off at the medical center, without the restaurant directly providing the meals or determining which staff receives the meals.	Temporary nurse staffing agency offers free meals to hospital staff and either directly provides them to staff or selects which staff will receive the meals.
Shoe manufacturer donates shoes to medical center staff, with medical center making the determination as to who would receive the donated shoes.	
Food delivery service provides medical center with vouchers for food delivery that the medical center can disperse in any way it chooses.	

6. Local policies: Specific UC locations may have local policies that would direct how, and whether, UC may accept the donation.

Questions to Consider

Before accepting a donation, the following questions will be helpful to consider:

- Does UC currently purchase any medical item or service from the donor? If yes, does the donor bill those items or service to Medicare or Medicaid?
- Is the donor directly providing the donated good or service to the medical center staff?
- Is the donor influencing or determining who will receive the goods or services being donated?
- Is the identity of the donor disclosed to the recipients? Is the identity disclosed to a person who might order medical items or services from the donor?
- What is the value of the good or service being donated?

Before accepting a donation, medical centers should work with their local fundraising and/or gift processing office(s). Not only do these offices coordinate proper processing of donations, but they can manage donor communications, including ensuring that donors are properly credited for their donation and, if applicable, issuing an acknowledgement for income tax purposes.

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