

AdvaMed China Code Guidance on Educational Items and Prohibition of Gifts

Background

Pursuant to Section X of the AdvaMed China Code, companies may not provide gifts to Health Care Professionals (“HCPs”). This prohibition includes **(1)** branded items that do not serve a genuine educational function for HCPs and **(2)** cultural courtesy gifts. Rather, companies may occasionally provide modest, appropriate educational items or patient benefit items to HCPs.

Risk Assessment Guidance

As each company and each industry sector may have varying educational needs and/or obligations which impact the degree of education companies must provide to HCPs, it is not possible to provide a comprehensive or satisfactory list of all educational items or patient benefit items that are permissible under Section X of the AdvaMed China Code. Items appropriate for one company or sector may not be appropriate for another company or sector. Accordingly, companies are encouraged to develop internal procedures for evaluating individual items to assess whether they serve a genuine educational function for an HCP or benefit patients. Below is a list of key considerations / questions to incorporate in any risk assessment relating to a company’s provision of an item to an HCP.

Key Considerations / Questions

- ❖ Is the HCP (or HCP staff) receiving the item from the company an existing or potential customer / business referral source?
 - *If the HCP (or HCP staff) is not an existing or potential customer or business referral source, the risk profile of providing the item is significantly reduced.*
- ❖ Why is the company providing the item to the HCP? Could the company’s provision of the item be interpreted by an objective third party as an unlawful reward and/or inducement? Are there any “strings attached” to the company’s provision of the item (i.e., is reciprocity from the HCP expected or implied)?
 - *Reviewing the underlying rationale for the company’s provision from an outsider’s perspective should help with determining its risk profile.*

- ❖ Why is this company (as opposed to another donor) providing the item to this HCP (as opposed to another recipient)? Has the company established a reasonable process with independent criteria for deciding which HCPs receive items? Has the company appropriately documented that process?
 - *Once implemented, these safeguards may help reduce the perception of impropriety and, therefore, reduce the risk profile of the company's provision.*
- ❖ Is the company's provision of the item(s) to the HCP an isolated event or frequent in nature? How frequently is the company providing the item(s) to the HCP?
 - *Greater frequency increases the perception of impropriety and, therefore, raises the risk profile of the company's provision.*
- ❖ *Is the item the company is providing to the HCP a gift? [Answer should be "No"]*
- ❖ *Is the item the company is providing to the HCP a branded, promotional item? [Answer can be "Yes", subject to the following analysis]*
 - Does the branded, promotional item the company is providing to the HCP—
 - Serve a genuine educational purpose relating to the HCP's practice or otherwise benefit patients? [*Answer should be "Yes"*]
 - Have a secondary purpose in addition to serving a genuine educational purpose and/or benefiting patients? [*Answer should be "No"*]
 - Exceed modest value? [*Answer should be "No"*]
 - Have any independent value (i.e., HCP can use the item for non-educational and/or non-patient-related purposes)? [*Answer should be "No"*]

Please reach out to AdvaMed's Vice President, Assistant General Counsel, Ethics & Compliance Ida Nassar (inassar@advamed.org) with any questions concerning the China Code Update.