

Considerations For Provider Nutraceutical Sales

Natalie S. Lesnick | March 2024

In the world of healthcare, the sale of nutraceutical and dietary supplements has been and continues to be big business. In recent years, we have seen an uptick in provider sales of these products, whether that be physician practices, chiropractors, physical therapists, etc. While this practice may appear to be a way to increase profits, it does not come without risk. Several professional organizations have issued warnings about provider sales of nutraceuticals, and several state legislatures have banned, restricted the profits from, or are working to limit the sales of nutraceuticals and dietary supplements. The American Medical Association has warned that these sales can “erode patient trust, undermine the primary obligation of physicians to serve the interests of their patients before their own, and demean the profession of medicine.” Providers looking to move into this space should be aware of several risk areas and implement safeguards to reduce these risks. Below are some areas to consider:

- **Adulteration and Misbranding.** A high enforcement area for the FDA and FTC, with several manufacturers and distributors of nutraceuticals and dietary supplements receiving warning letters regarding issues of misbranding and adulteration of products. The FTC Dietary Supplement Advertising Guidelines of 1998 note that “all parties who participate directly or indirectly in the marketing of dietary supplements have an obligation to make sure that the claims are presented truthfully and to check the adequacy of the support behind those claims.” Exercising diligence when advertising and handling products is imperative to ensure one does not run afoul of federal oversight or provide misinformation regarding the products. It is also recommended that providers only offer products that have undergone reliable and credible scientific studies proving their benefits.
- **Conflict of Interest.** As noted above, professional organizations do not favor nutraceutical sales by providers due to the actual and perceived conflicts of interest that arise. Providers should seriously consider whether selling these products creates an actual or perceived conflict of interest. Providers should consider implementing disclosure practices to patients and regulatory bodies about any financial interests they may have in

the sale of the products to minimize risk and advise patients that they are not required to purchase the products from the provider.

- **Fraud and Abuse Laws.** In certain states, nutraceutical and dietary supplement sales may implicate kick-back or fee-splitting statutes. While some states do not extend these statutes to “goods,” it’s important to have a legal and compliance review of the compensation structure of the sale to ensure provider sales of these products are not violating relevant fraud and abuse laws.
- **State Licensing Restrictions.** Many state licensing boards have provided guidance or regulations for nutraceuticals and dietary supplement sales to patients. It is important to review this information, and if it is not readily available, contact the licensing board of the state of practice.
- **Patient Exploitation.** Depending on the jurisdiction, state patient exploitation laws may impact the selling of nutraceuticals to certain patient populations. This may be a larger concern if providers enter into exclusive arrangements with manufacturers.
- **Limitations on Profits.** Certain states, like New Jersey, have regulatory limits on the profits providers can obtain from selling nutraceutical and dietary supplements. It is important to review state law to ensure you are complying with any of these regulations.
- **Patient Need.** Providers should also consider the needs of the patients that they serve. For example, what is the availability of the products being sold? Depending on the time or geographical locations of the patients, providing these products may satisfy a patient’s need.

In the world of nutraceutical and dietary supplement sales, it is better to exercise caution than quickly implement processes that may lead to problems down the road. This list is by no means exhaustive, and depending on your practice and location, other risk areas may arise or be more prevalent than others. Consult a compliance professional or an attorney experienced in this area for advice.

This guest blog was from Natalie Lesnick, JD, CHC, CHPC. For more information on this topic, contact her at nlesnick@strategicm.com.

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