

ExecTech Management Consulting

To: Practice Owner

Tips and Ideas

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Is it Legal or Illegal to Waive Co-payments in California?

Most insurance plans require patients to help pay for their care with annual deductibles and co-payments. To maximize your profit, you need to collect these patients' portions.

However, in some communities, practice owners are pressured to not collect the patients' portions. "Dr. Smith doesn't make patients pay the co-payments. If you require it, I'm just going to switch to Dr. Smith."

While the law on this with government programs is clear, it is not clear when it comes to private insurance companies.

Use these facts to make your decision about what is the right thing for you to do.

1. With Medical, Medi-Cal and Denti-Cal, you need to collect the co-payment, or at least make an effort to collect it. You cannot waive the co-payments as a routine. You can waive co-payments if the patient is a hardship case. You cannot advertise that you waive co-payments for government programs.
2. With insurance companies, the issue is not settled. Insurance companies are constantly looking for ways to make you collect co-pays as it reduces the number of claims they have to pay. Some day, they might get a law passed or get a judge to punish a practice owner for waiving co-pays. Until then, all they can do is claim that it is illegal.

In 1994, Delta Dental did win a case against Smilecare (a supplemental insurance company that was covering the co-payments for its customers). The case did not make waiving co-payments illegal, but the court wrote that "Insurance creates a moral hazard because it desensitizes patients to costs and induces them to seek inordinate amounts of care. Co-payments offset this hazard by forcing patients to reflect upon the cost of services and moderate their demands for treatment."

In your contracts with insurance companies, you agree to collect the co-payments. If an insurance company finds you waived a co-payment, it may have the right to stop payments on that claim, cancel your contract or even sue you for money it has already paid to you when you waived the copayments.

3. No one in California has lost his or her license from waiving co-payments. If one had, the insurance companies (especially Delta) would make a lot of noise about it and use it to enforce its contracts.
4. The California Attorney General (who is in charge of taking legal actions against healthcare providers for the State Boards) wrote an opinion in 1991, "that a dentist who waived a co-payment did not violate any California laws against misrepresentation and fraud even though the patient's dental insurance plan required that the co-payment had to be paid."

Attorney Opinion

We asked our favorite attorney, Rachel Nelson, to look into this and give us her opinion. She wrote, "Under certain circumstances, you can waive or discount patient co-payments. You should be aware that from a legal standpoint, routinely offering discounts to patients is risky. It can implicate various state and federal laws, and can attract the attention of government investigators. You also need to check your provider agreements because the agreements may prohibit discounting or waiving of copays. You may offer discounts in individualized circumstances based on legitimate financial need, hardship, or uncollectibility. In general, you should be sure that your billing practices are consistent, reasonable, and well documented."

Feel free to contact Rachel with any questions you have about this or any legal matter: (818) 227-5090 or ran@nelsonlawofficeapc.com.

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