



Is Cash King?

Offering cash discounts to patients for the physical therapy services they receive is a highly debated issue. In response to questions asked by physical therapists, Karen Ravitz, the Wisconsin Physical Therapy Association's attorney, provides these responses to help you guide your decisions regarding offering cash discounts to patients-

Ms. Ravitz's advice regarding cash discounts:

"Any discount is inherently a kickback at its essence. A kickback is an income generating opportunity given to the patient. Outside of a federal program (Medicare/Medicaid), generally speaking, if a service is not covered, you may offer cash discounts. However, this is a risky business. Further information is provided below. If it is a covered service, you will need to be careful about negotiating cash discounts. You will need to look at your individual insurance policy to determine whether you can or can not (or should or should not) offer a cash discount to your patients. You can not always or frequently give the discount either as it will impact your usual and customary rate (it will go down)."

Q. I would like to offer cash discounts to Medicare patients. Is this ok?

A. "No. Offering a cash discount to Medicare beneficiaries is problematic under federal anti-kickback laws. The federal anti-kickback statute's main purpose is to protect patients and federal health care programs, such as Medicare and Medicaid, from fraud and abuse by curtailing the corrupting influence of money on health care decisions. The federal anti-kickback statute prohibits individuals or entities from knowingly and willfully offering, paying, soliciting or receiving remuneration to induce referrals of items or services covered by Medicare, Medicaid or any other federally funded program.

Discount arrangements may also come in the form of waivers or deductions in insurance costs, but cannot be used as marketing incentives. Generally, the civil money penalties law prohibits a physical therapist from offering or transferring remuneration to any individual eligible for Medicare or Medicaid that such physical therapist knows or should know is likely to influence the individual to order or receive from such physical therapist any item or service for which the payment may be made under Medicare or Medicaid."

"Waiver of coinsurance and deductibles" can be "a violation of the antikickback statutes. Remuneration includes the waiver of coinsurance and deductible amounts and transfers of items or services for free or for other than fair market value.

However, there is a safe harbor that enables waivers in certain circumstances. Waiver of coinsurance and deductible amounts by a physical therapist is allowed, if:

- the waiver is not offered as part of any advertisement or solicitation;
- the physical therapist does not routinely waive coinsurance or deductible amounts;

- and the physical therapist waives coinsurance and deductibles after determining in good faith that the individual is in financial need,
- the physical therapist failed to collect coinsurance or deductible amounts after making reasonable collection efforts,
- or otherwise fall within an exception or safe harbor under the civil money penalties law or anti-kickback statute.”

For more information regarding waiver of coinsurance and deductibles, go to <http://www.oig.hhs.gov/fraud/docs/alertsandbulletins/121994.html>.

For more information from the OIG regarding discounts, check the Office of Inspector General Web site at <http://www.dhhs.gov/progorg/org>”

Q: Can I waive co-payments?

A. “Rarely. Insurance companies created deductibles and co-payments as a means of involving patients in the cost of their care and to discourage over-utilization. (Medicare and Medicaid co-pay waivers are not allowed, except under limited circumstances for documented indigency.) Insurers universally impose a contractual duty on providers to make a reasonable effort to bill and collect the applicable co-pay and/or deductible. They view the routine waiver of patient payments as a breach of contract and have initiated litigation against those who flout this requirement. Accommodating patients with individually documented financial limitations is acceptable, but when there is a pattern of routine waivers and no documentation, providers will have difficulty defending their conduct.”

Q: Can I offer a "sliding scale" to patients experiencing financial hardship?

A. “Yes. Many medical practices and all hospitals have developed a financial hardship policy to address the documentation and administration aspects of waiving patient liability. Often, the policy is based on federal poverty guidelines. If there is a defined policy and procedure for the consistent administration of an objective and standardized approach, providers are permitted to apply a "fee scale" for indigent patients. The health care provider should have a written policy in place that establishes guidelines for determining a patient's indigency.

There are many federal programs, community agencies, and similar health care providers with long-standing, formalized "fee scaling" programs. It is advisable to do a little homework and contact local social service agencies and welfare clinics to learn what the community standard is in your area, as there are regional variations. Consistency of administration, objectivity in policies, and documentation of individual eligibility are essential.”

Q: Can I offer a time-of-service discount?

A. "Maybe. The question implies that the patient eligible for this offer has no insurance coverage. If that is true, a discount for cash is permitted, according to the Department of Health and Human Services' Office of the Inspector General in a 2004 letter responding to this question."

Conflicting opinions exist for discounting below the Medicare fee schedule. According to information presented at the APTA Reimbursement Conference, December 1-2, 2006; Gayle Lee, Federal Government Affairs Director, stated that fees can be discounted below the Medicare fee schedule for Medicare non-covered services. For example, when providing services after the Medicare cap has been met, or services not included in the Medicare benefit, such as Anodyne therapy, maintenance therapy, etc. The Medicare beneficiary should be aware that the service is not covered and that cash payment is expected. It may be appropriate to have the patient sign an ABN or NEMB for this purpose.

"Additionally, time-of-service discounts raise the issue of a provider's customary charges for a procedure. Some private insurance plans and some federal programs have a "most favored nation" clause in the contract with the provider that entitles the plan to pay the lowest charge the physician bills to anyone. Some providers fear that if third-party payers find out about cash discounts, they will demand a discount for their beneficiaries as well. The health plan would be entitled to the discount if it paid you on the same day services were rendered. Most, however, do not pay you for weeks to months, so the point is moot. If, at some point, payers' reimbursement systems are able to pay providers on the same date patients are seen, this policy will need to be revisited. Agreement with various third-party payers can present unique circumstances for your practice."

Q. If an insurance company's policy does not cover a service- such as iontophoresis or aquatics, can you bill cash. If you do & the patient agrees to pay up front, can you offer them a discount?

A. "Yes, you can bill cash. Whether you can offer a cash discount is governed by the terms of your insurance policy. If it is not a covered service, you may."

Q. What if the same patient needs services once their benefit is exhausted? (The patient uses up the 20 PT visits he/she is allowed for the year through his/her commercial health plan).

A. "See the answer to question above. If a patient has exhausted their benefit then the service is treated as a non-covered service."

Q. If we can negotiate a discount with a payer, an employer, an attorney- why not a patient?

A. "Because of the beneficiary inducement rules. Health care providers are not afforded the same rules as other businesses."

Responses contained within quotations are the opinion of Karen Ravitz, JD.