Prompt pay, cash discounts, dual fees legal for healthcare providers (physicians, chiropractors, acupuncturists)?

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Are prompt pay, cash discounts, dual fees legal?

There are lots of questions and many different variations. Let's explore a few, focusing on the idea of providing differential services to a population of patients.

Superbills and Codes

Recently a chiropractor called us with the following scenario:

- The chiropractor is not contracted with any insurance and not "in network" anywhere
- The chiropractor will provide "corrective care" to a car accident victim and submit a claim to an injured patient's health insurance provider.
- The chiropractor wants to provide superbills, yet not get caught giving wrong codes for treatments. The superbill contains a diagnosis and procedure code.

Here it would be good to implement some basic 'best practices.' For example:

- Be sure the superbill accurately reflects the healthcare services that were performed, and the **usual and customary** charges for such services.
- Have a billing and coding expert verify that all the right procedure codes are in place.
- Be sure all accounting is accurate with respect to patient funds.

That leads to the next arena, which is that the chiropractor wanted differential prices for different services.

Dual Fees

This is very common – healthcare providers thinking of their services in terms of diagnostic and therapeutic services on one hand, and healthcare services aimed at holistic health on the other.

The chiropractor had read that “dual fees” are problematic, but want to charge:

- One price for “corrective care”
- A lower price for “wellness care”

So often these questions fall in the gray zone. There may be legal rules that apply, but one must search and figure out which ones could come back and bite.
For example, in many states, there are statutes prohibiting “discrimination” among categories of patients. This means that a physician or chiropractor cannot stratify patients by “type” of service—only by diagnostic or therapeutic category according to accepted procedure codes.

Some Best Practices & the Concierge Medicine Model

Some best practices here and for the earlier scenario would be:

- Use recognized billing codes for each healthcare service.
- Use Evaluation & Management (E&M) codes to designate level of **complexity** of the procedure. Use the more complex codes for more complex “corrective” situations.
- Provide patient with a statement of financial responsibility to sign, by which the patient undertakes to pay for services if no insurance is involved or no insurance kicks in.
- Have a clear **patient agreement** which sets out the scope of services.

One possibility is that the physician or chiropractor might create a **hybrid practice**. One portion of the practice will be insurance-based or fee for service; the other will be a concierge, wellness plan that will involve payment for a bundle of services.

See our earlier posts such as:

- **LEGAL REVIEW OF CONCIERGE MEDICINE CONTRACTS IS NEEDED**
- **HOW TO ROCK CONCIERGE MEDICINE LAWS**
- **NEW YORK CONCIERGE MEDICINE LAW ARCHIVES**
- **HOW MEDICARE.GOV HELPS WITH LEGAL REVIEW OF CONCIERGE MEDICINE**

Potential Legal Red Flags

Note several potential legal red flags here with having two different levels of service:

- Discrimination: Charging **different** amounts to different patients for the **same** service would probably raise discrimination and other legal red flags.
- Malpractice & standard of care: Another question the practitioner should address is whether, when providing “wellness only care,” the standard of care for “corrective” or regular care would apply—i.e., whether it could be considered malpractice if the practitioner failed to make in inquiry or perform care that would have been done in the ‘regular’ practice.
- Kickback issues: Bundling and giving discounts can create anti-kickback concerns (e.g., “pay for 9 sessions, and the 10th is free!”). See: Concierge medicine – is packaging legal services legal.
- Auto-renewal laws: Many state statutes require specific disclosures whenever there is a **charge that will beautomatically renewed periodically** (say, every month).

The legal parameters can be straight-forward where there is a clear statute that obviously applies to a simple situation. The analysis is more complex when there are multiple legal rules involved; the practice develops a hybrid model; and the legal terrain consists of risks that must be decoded and interpreted. In this situation, consult an experienced healthcare to navigate the regulatory landscape.