Using a Sliding Fee Scale  *What to Do, What to Avoid*

*From time to time, practitioners encounter clients who are unable to afford the services they need. Many practitioners faced with this situation consider reducing their fee on a “sliding scale” basis. Doing so may carry significant legal risk if not instituted correctly.*

Following are several pointers for practitioners on what to do and what not to do.

**DO**

*Do follow your managed care contract.*

You cannot charge an insured client less (or more) than you have contractually agreed to with his or her managed care company. The vast majority of managed care contracts prohibit practitioners from waiving or reducing copayments or deductibles. If this issue is covered in your contract, you must contact the managed care company for permission to waive or reduce the copayment or deductible. Unfortunately, this interaction is likely to be a complicated and time-consuming endeavor.

**DO**

*Do create a paper trail.*

Require written documentation of need from those clients who will be paying an adjusted rate. Documentation can include pay stubs and income tax returns. One approach involves charting a payment scale based on annual household income and the number of dependents. Consider basing adjusted fees on the poverty levels of your state. For example, some psychologists offer a reduced fee to those clients whose incomes are less than a certain percentage above the poverty level. If a Medicare beneficiary cannot afford the charges for copayments or deductibles, the practitioner must ask the beneficiary to sign a waiver explaining the financial hardship. If the beneficiary fails to sign the waiver, the practitioner must document that he or she made a good-faith effort to collect the charges.
Don’t routinely waive coinsurance payments or deductibles for Medicare and Medicaid patients.

Offering to waive coinsurance payments or deductibles for Medicare or Medicaid patients can be considered fraud. In addition, the government may view frequent reduction of copayment or deductible amounts for these patients as an attempt by the practitioner to induce patients to use his or her services, which is illegal under federal law and many state laws.

The Office of the Inspector General for the U.S. Department of Health and Human Services has made clear that “non-routine, unadvertised waivers of copayments and deductibles based on individualized determinations of financial need” is an exception to this prohibition.

Therefore, it is important that practitioners who wish to waive copayments or deductibles do so only on an occasional basis and not advertise their waiver program in a way that is intended to induce people to use their services – for example, by indicating that Medicare beneficiaries are routinely entitled to a specified discount.

In some states, fraud is not just limited to those who entice Medicare and Medicaid clients but may apply more broadly. Your state psychological association likely has information about applicable state laws and regulations.

Don’t overlook the potential impact on your practice finances of routinely reducing fees for patients with insurance coverage.

When practitioners regularly discount their fees, they risk having payers reduce their payments. Most government programs and managed care companies pay practitioners based on the lesser of the practitioner’s actual charge or the payer’s fee schedule amount.

For example, if a practitioner’s charge is $120 an hour and the Medicare fee schedule amount for that service is $100, Medicare pays the practitioner 80 percent of the $100 (with the client paying the remaining $20 as copayment). If the practitioner routinely discounts his or her fee by half for non-Medicare clients, Medicare could argue that the practitioner’s usual and customary rate is $60 per service hour, not $120, and Medicare therefore should be paying the practitioner 80 percent of $60. Many managed care companies could make a similar argument, depending on how the payment provisions in the contract are worded.

Keeping in mind the general considerations outlined above, every practitioner needs to make an individual decision about the level of his or her fees, as well as discount and fee waiver policies.

Many psychologists who prefer not to institute a sliding fee scale are still concerned about helping those who need psychological services but are hard-pressed to pay. One option to consider is allowing those clients to pay their bill over time. Another option is to keep your full fee but offer a limited amount of pro-bono services in the community. You can contact local social services agencies to be placed on a referral list for clients in need.

In the event that you are unable to provide the needed services at a cost some clients can afford, provide them with several referral options from an up-to-date list of lower cost but competent providers, such as community-based mental health centers in the area.

Please note: This article does not constitute legal advice. If you need a legal opinion, you should work with an attorney in your area with appropriate experience.