

## Optometry Coding & Billing Alert

### READER QUESTIONS: Waive Fees for Colleagues and Put Doctors at Risk

**Question:** One of the doctors in my practice has asked me to waive the charges for services he provided to the child of one of his friends from medical school, citing -professional courtesy.- Am I allowed to do this? If so, how should I go about it?

New Jersey Subscriber

**Answer:** The safe answer: Don't do it. Although physicians in the past have extended professional courtesy to colleagues with the best of intentions, there are now many federal and state laws that prohibit the practice under a wide variety of circumstances.

The routine waiver of deductibles and copayments is unlawful because it results in (1) false claims, (2) violations of the anti-kickback statute, and (3) excessive utilization of items and services paid for by Medicare, according to the U.S. Office of Inspector General. Make sure you and the practice owner understand the law in this area.

The legality of particular professional-courtesy arrangements will turn on the specific facts and on the specific intent of the parties.

**The main difference:** Generally, the government is treating waivers of the entire professional fee differently from waivers of copayments or deductibles:

- **Waivers of copayments or deductibles.** Except where they are based on individual circumstances of financial hardship or occur after reasonable collection efforts, the False Claims Act prohibits these types of waivers. This is to discourage doctor A from offering waivers to doctor B in order to encourage doctor B to refer patients to doctor A.

- **Waivers of the entire fee.** Under the anti-kickback statutes and Civil Monetary Penalties Law (CMPL), waiving the entire fee is prohibited when it is done with the intent to generate additional federal healthcare business through referrals.

**However:** If there is no intent to induce referrals, a waiver may not violate the False Claims Act as long as it does not violate the anti-kickback rules--and CMPL.

**Just say -no-:** Because of the complexity and seeming ambiguity of the law in this area--and the fact that the legality of any particular fee waiver depends on the particular facts of the situation--the safest approach may be to abandon the practice of extending professional courtesy to other physicians altogether.

Advice for Reader Questions and You Be the Expert contributed by **David Gibson, OD, FAAO**, practicing optometrist in Lubbock, Texas; and **Charles Wimbish, OD**, president of Wimbish Consulting Group in Martinsville, Va.