

PROMPT PAY DISCOUNTS

Healthcare providers sometimes offer "prompt pay" discounts to encourage patients to pay their bills within a certain period, including outstanding copayments or deductible amounts. Such programs should be structured appropriately to ensure compliance with applicable laws and payer contracts.

1. Federal Fraud and Abuse Laws. If the discount is offered to induce the patient to receive other services payable by Medicare, Medicaid, or other government programs, the discount may violate federal fraud and abuse laws. The federal Anti-Kickback Statute ("AKS") prohibits knowingly offering any remuneration to persons to induce or reward referrals for items or services covered by federal health programs, including Medicare or Medicaid. *See* 42 U.S.C. § 1370a-7b. The AKS applies to discounts offered to federal program beneficiaries if the purpose of the discount is to induce referrals. *See, e.g.*, OIG, Special Advisory Bulletin: Offering Gifts and Other Inducements to Beneficiaries (8/30/02); OIG, Special Fraud Alert regarding Routine Waiver of Part B Co-Pays and Deductibles (12/19/94). Similarly, the federal Civil Monetary Penalties Law ("CMPL") prohibits knowingly offering anything of value to Medicare or Medicaid beneficiaries that is likely to influence the beneficiary's selection of a particular provider of services payable by Medicare or Medicaid, including waivers or discounts of coinsurance or deductible amounts. *See* 42 U.S.C. § 1320a-7a(a)(5); 42 C.F.R. § 1003.102 and .103(b)(13).

a. Discount Safe Harbor. The AKS and CMPL contain a limited safe harbor that allows a hospital to discount a patient's copays and deductibles for inpatient hospital services payable under the prospective payment system if the hospital satisfies the following standards:

- The hospital does not claim the discount as bad debt on its cost report or otherwise shift the burden of the reduction or waiver onto Medicare, a state health care program, other payers, or individuals.
- The hospital must offer to reduce or waive the copays or deductible amounts without regard to the reason for admission, the length of stay of the beneficiary, or the diagnostic related group ("DRG") for which the claim for Medicare reimbursement is filed.
- The hospital's offer to reduce or waive the copays or deductible amounts must not be made as part of a price reduction agreement between a hospital and a third-party payer unless certain standards are satisfied.

42 CFR § 1001.952(k). Hospital prompt pay programs for inpatient services that fit within the safe harbor do not violate the AKS or CMPL.

b. Advisory Opinion 08-3. In Advisory Opinion 08-3, the OIG approved a hospital's prompt pay discount on patient cost-sharing amounts and amounts owed for both inpatient and outpatient services. Under the program, the hospital gave a 10-15% discount on balances paid before discharge, and a 5-10% discount on balances paid within 30 days of service. The discount program applied to all services (inpatient and outpatient) and to all patients. Although the outpatient program did not fit within the AKS safe harbor, the OIG concluded that it would not assert AKS or CMPL claims against the provider where the hospital incorporated certain safeguards to ensure that the program was not intended to induce patient referrals and did not promote over-utilization of those services, *e.g.*,

- The hospital would not advertise the discount opportunity; instead, patients would only be informed of the discount during the course of the actual billing process.
- The hospital would notify other third-party payers of the prompt pay policies, thereby allowing the payers to address any issues that the program raised under the payer contracts.
- The hospital would bear all the costs of the prompt pay program; it would not pass the costs to Medicare or Medicaid.
- The amount of the fees discounted would bear a reasonable relationship to the amount of avoided collection costs.

The Advisory Opinion is not binding on other providers, but it demonstrates factors that providers might implement in their prompt pay programs to minimize the risk of federal violations.

2. State Statutes. Providers must consider their own state laws in addition to the federal statutes, including state anti-kickback statutes. For example, Idaho's anti-kickback statute states:

It is unlawful for a service provider to engage in a regular practice of waiving, rebating, giving, paying, or offering to waive, rebate, give, or pay all or part of a claimant's deductible or claim for ... health insurance.

Idaho Code § 41-348(2). Violations may result in a \$5000 fine. *Id.* at § 41-327. It is not clear whether an established discount policy would constitute a "regular practice" of discounting copays and deductibles, but providers should carefully consider their program in light of state laws.

3. Payer Contracts. As suggested by Advisory Opinion 08-3, offering discounts may violate the provider's managed care contracts, which generally require the provider to

collect the full amount of copays or deductibles. Offering unauthorized discounts—especially where there is no showing of financial need or unsuccessful collection efforts—could result in claims for breach of contract or insurance fraud. Accordingly, providers should review their third-party contracts to ensure compliance or obtain and document a waiver from the third-party payer.

4. Effect on Usual and Customary Charges. Finally, a pervasive discount program might also affect a provider’s usual and customary charge for services, which is sometimes a factor in third-party contract terms or negotiations. If the discount is routinely and widely offered, the provider’s usual charge may become the discounted rate. Medicare generally prohibits providers from charging Medicare “substantially in excess” of the provider’s usual charges. *See* 42 CFR § 1001.701. A discount program likely will not trigger the “usual charge” concerns unless it is offered to a significant portion of the provider’s patients.

Conclusion. As a practical matter, reasonable prompt pay discounts are not likely to cause significant concerns so long as: (1) they are not used as a way to induce referrals for other services; (2) the value of the discount is reasonably related to the avoided cost of collections; and (3) the program is consistent with third-party payer contracts or approved by third-party payers. Providers should check their relevant state statutes and payer contracts to confirm.