

Waiving the Deductible

In General

The issue is this: is it proper that the provider waive the copayment and deductible, thereby accepting the plan benefit as full payment with an assignment? The provider would argue that the practice is sound and proper in that the end result is in the public good.

The response is that this billing practice is fraudulent unless it is fully disclosed to all parties concerned. Numerous court decisions support the condemnation of the practice as fraudulent.

As medical practice becomes more competitive, the fraudulent practice of waiving the copayment and deductible will increase in significance. Some providers are even advertising that they will do a waiver as an inducement to increase their practices; they also refer to it as *free* coverage.

In view of the consistent and stern court responses, the plans should increase their efforts to identify such waiver practices and respond accordingly. The response, of course, is that where such practice is found, no plan benefits are payable.

Proper Claim Handling

Presume that the provider agrees to waive the deductible and copayment, and accordingly submits a bill for \$100, the deductible of \$20 will be waived. This establishes that the adjusted eligible charges are \$80. Since the 30% of \$16 is waived, the adjusted eligible charges become \$64. This logic is carried down to where the plan owes nothing. This is an unexpected result to the provider but entirely consistent with the existing court decisions and plan language.

Legal Background

As cited earlier, numerous courts have held that the waiver practice is a fraudulent and deceptive practice. The anti-waiver practice does not constitute restraint of trade or price fixing. Where advertised and where postal service is used, such practice may well constitute a violation of the RICO (racketeering) statute.