



Wisconsin Chiropractic Association

Help Desk FAQs

Frequently Asked Questions Regarding Physical Therapist (PT) or Massage Therapist (MT) Employees

May chiropractors base a PT or MT employee's compensation on a percentage of the revenue they collect for their services?

The area of law for splitting fees with physical therapists is very clear. Wis. Stat. 446.04(4) states that "splitting or dividing any fee for chiropractic service with any person except an associate licensed chiropractor" is against the law. In addition, Wis. Stat. § 448.56(2) prohibits physical therapists from splitting any fee with someone else who did not perform the physical therapy services. Thus, a chiropractor may pay a physical therapy employee any salary or hourly wage they wish for his or her work, but the compensation cannot be based on a percentage of the revenue the chiropractor collects for his/her services.

The law is less clear for splitting fees with massage therapists. As noted above, Wis. Stat. § 446.04(4) prohibits chiropractors from splitting any fee for "chiropractic service," unless the fee is split with another licensed chiropractor. Although the practice of massage therapy and the practice of chiropractic may overlap, according to the Wisconsin Attorney General, only a chiropractor may practice chiropractic science, which is what distinguishes it from overlapping practices like massage therapy. See *OAG 1-01*. In other words, a massage therapist would not provide a "chiropractic service," even though the service may be similar to a chiropractic service because the massage therapist could not apply chiropractic science to those services. Therefore, under the reasoning of the Attorney General, a chiropractor would not be splitting any fee for a service provided by a massage therapist working within his or her own scope of practice.

Nevertheless, fee splitting raises the risk of running afoul of other laws, such as the federal antikickback statute. To the extent that sharing revenues generated by a massage therapist directly or indirectly induced referrals of patients for services reimbursed by a federal health care program, such payment arrangement would implicate the antikickback statute. See 42 USC § 1320a-7b(b). The antikickback statute provides safe harbors to protect payment arrangements from scrutiny. Those arrangements typically require the payment to be set in advance, consistent with fair market value in arms-length transactions and to not take into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare, Medicaid, or other federal health care programs. See *e.g.*, 42 CFR § 1001.952(d).

If a physical or massage therapist rents space from a chiropractor, could the chiropractor take a percentage of his/her revenue instead of a fixed rent payment?

The answer to this question is the same as provided above. For physical therapists, the answer is clearly "no." It is not permissible to base the rent of the space on a percentage of the revenue derived from the

massage or physical therapist's services, as to do so would violate Wis. Stat. 446.04(4) and Wis. Stat. § 448.56(2).

For massage therapists, the answer is less clear, but the chiropractor will want to take into account the antikickback statute and try structuring a space rental agreement that falls within the antikickback safe harbor for space rentals. Such a structure would be good practice for agreements with any other type of practitioner, including PTs and MTs.

That safe harbor would require the rental charge to be set in advance, consistent with fair market value in arms-length transactions, and not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare, Medicaid, or other federal health care programs. See 42 CFR § 1001.952(b).

Can a physical therapist or a massage therapist use a chiropractor's provider identification number to bill for their services, if he or she is an independent contractor renting space from the chiropractor?

No. Services provided in a chiropractic office may only be billed under the chiropractor's provider identification number, if the services are provided by the chiropractor or an actual employee of the chiropractor who has the training required under Chir 10. Wis. Stat. 446.04(1), and state that the "loaning of a chiropractic license or certificate to anyone" is a violation of the law as is "any conduct of a character likely to deceive or defraud the public." Additionally, Chir 6.02 (14) states that it is unprofessional conduct for a chiropractor to "Obtain or attempt to obtain any compensation for chiropractic services by fraud."

Must an insurance company pay for physical or massage therapy rendered by a PT or a MT that is an employee of a chiropractor?

Not necessarily. An insurance company can refuse to pay for these services if they are not provided directly by the chiropractor, as long as it has the same policy for the medical profession. It is also important to note that many insurance companies refuse to pay for massage services of any kind. This is also legal, as long as they do not discriminate between chiropractic and medical services.

Will my malpractice coverage cover the work of my physical or massage therapist?

Malpractice policies vary over their terms of coverage. Do not rely of advice you receive from another chiropractor, as he or she may have a different type of malpractice coverage. You should obtain the answer to this question in writing from your malpractice carrier.