

The Legal Scoop on Offering Prompt Pay and Financial Hardship Discounts in Wisconsin

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Many providers, including chiropractors, like to offer patients “time of service” or “prompt-payment” discounts. According to an Office of Inspector General (OIG) Advisory Opinion from 2008, prompt payment discounts are discounts for a patient’s prompt payment of their cost-sharing amounts and amounts owed for services not covered by insurance.¹ Prompt pay discounts are designed to reduce a provider’s accounts receivables and costs of debt collection, and to boost its cash flow. Often times, prompt pay discounts are equivalent to the amount of collection costs that would be avoided and are offered to patients regardless of their financial status or ability to pay.² In other words, time of service or prompt pay discounts save time for providers in collecting patient cost-sharing fees. They also may save money for patients, especially those who participate in “high deductible health plans” or HDHPs,³ which are growing in popularity across the United States.⁴ The average annual deductible in HDHPs is about \$2,500 for individuals choosing in-network providers and \$5,000 for families choosing in-network providers.⁵

Nevertheless, there are state and federal rules and guidelines that govern whether, when and how prompt pay or financial hardship discounts are permissible. As much as some dislike patient cost-sharing, insurers and regulators believe patient cost-sharing plays an important role in controlling overutilization of health care items and services.⁶ “If beneficiaries are required to pay for a portion of their care, they will be better health care consumers, selecting items or services because they are medically needed.”⁷

Whether providers may offer prompt pay discounts to patients depends on the patient’s insurance coverage. This white paper answers frequently asked questions regarding offering prompt pay discounts to HDHP, self-pay, and government insured patients. It also answers questions about offering financial hardship discounts.

1. May providers offer a discount to HDHP patients willing to pay promptly, such as on the same day of service?

Yes under certain circumstances, according to an informal Wisconsin Attorney General Opinion from 2004.

However, Attorney General Opinions (AG Opinion), whether formal or informal, do not have the force of law. Courts may use them as persuasive authority, if at all.⁸ Nevertheless, the 2004 opinion offers some helpful guidance. Specifically, the AG Opinion states that providers who wish to offer patients discounts on their bills based upon the patient’s prompt payment of those bills should do two things:

- 1) Offer such discounts to all patients with no discrimination; and
- 2) Fully disclose the discount to the patients and their insurance carriers.

2. What is the rationale behind the AG Opinion?

The AG Opinion cites two different Wisconsin laws that could impact prompt pay discounts. The first law is at Wis. Stat. § 146.905(1). That law prohibits “health care providers” (which includes chiropractors) who provide services or products to individuals with coverage under a “disability insurance policy” from reducing or eliminating or offering to

¹ OIG Advisory Opinion No. 08-03, at 2 (Feb. 8, 2008).

² Id.

³ According to [healthcare.gov](https://www.healthcare.gov), high deductible health plans (HDHP) are plans that feature higher deductibles than traditional insurance plans. They can be combined with a health savings account or a health reimbursement arrangement to allow patients to pay for qualified out-of-pocket medical expenses on a pre-tax basis. See <https://www.healthcare.gov/glossary/high-deductible-health-plan/>.

⁴ The percent of employers offering HDHPs increased from 39% in 2013 to 48% in 2014. See <http://www.forbes.com/sites/brucejapsen/2014/11/19/half-of-employers-pushing-high-deductible-plans-onto-workers/>

⁵ Id.

⁶ Dept. of Health and Human Services, Office of Inspector General, *Hospital Discounts Offered to Patients who cannot Afford to Pay their Hospital Bills* (Feb. 2, 2004).

⁷ Id.

⁸ *FAS, LLC v. Town of Bass Lake*, 2007 WI 73, ¶ 18 (Wis. 2007).

reduce or eliminate coinsurance or a deductible required under the terms of the disability insurance policy.⁹ The statute provides an exception for offering discounts if paying the entire fee results in “undue financial hardship” for the patient, discussed further below.¹⁰ Because prompt pay discounts are not offered for reasons of financial hardship, this exception does not apply.

HDHPs fall within the Wisconsin definition of “disability insurance policy.” HDHPs cover health services, once the deductible is met.

Under Wis. Stat. § 146.905(1), Wisconsin chiropractors who treat patients with a HDHP or another type of plan, may not reduce or offer to reduce the amount the patient owes under his or her deductible or other cost-sharing amount, such as coinsurance or copayment. Prompt pay discounts given to HDHP participants would not reduce the amount of the deductible owed by the patient, as long as the provider informs the insurer of the discounted amount. Rather, the impact of the discount on the deductible would be to extend the time the deductible is in effect before the plan covers health care costs.

As an example, let’s say Patient A has a \$1000 annual deductible before his insurance starts covering the cost of care. Patient A visits Chiropractor X and the services received total \$100. Chiropractor X offers a 10% time of service discount to Patient A, which Patient A accepts. Patient A has now met \$90 of his \$1000 deductible rather than \$100 of his deductible. It will take Patient A about ten more visits, assuming a prompt pay discount each time, before Patient A meets his deductible and his insurance starts paying for the costs of care. Without the 10% prompt pay discount, Patient A would need only nine more visits to reach his deductible amount.

The second law the AG Opinion cites is Wis. Stat. § 943.395, which makes it illegal to submit fraudulent insurance and employee benefit program claims. The AG Opinion concludes that prompt pay discounts would not violate Wis. Stat. § 943.395 as long as the provider discloses the amount of the discount to the patient’s insurer. Indeed, under Wisconsin Chiropractor Standards of Conduct, chiropractors must accurately report fees charged to any third party payer. See Wis. Admin. Code Chir. 6.02(29) (note).

3. *What about offering prompt pay discounts to self-pay patients, such as uninsured patients or patients who receive services not covered by insurance?*

Yes, you can offer prompt pay discounts to those patients, unless the provider contract with the patient’s health insurer prohibits such discounts. Thus, it is important to review your provider contracts to understand what limitations the insurer places on noncovered services.

4. *Are there any risks to offering prompt pay discounts to HDHP or self-pay patients?*

Yes. The primary risk in offering prompt pay discounts to patients is frequent or large discounts could affect your “usual and customary” charge. For example, a chiropractor who offers prompt pay discounts to self-pay patients for services otherwise covered by insurance for insured patients risks running afoul of possible “Most Favored Nation” (MFN) clauses in the chiropractor’s contract with an insurer. These MFN clauses require the chiropractor to give the insurer the best available price for the service. If an insurer learns that a chiropractor customarily charges less for the same service to uninsured self-pay patients as insured patients, the MFN clause in the insurance contract may entitle the insurer to pay the chiropractor the lowest price charged by the chiropractor. Furthermore, if a chiropractor’s HDHP and self-pay patients pay the prompt pay discount often, the Medicare or Medicaid program may exclude the chiropractor from those programs because the chiropractor’s bills are “substantially in excess” of his or her “usual charge.”¹¹ As a result, chiropractors who contract with insurers and participate in the Medicare and Medicaid programs should avoid situations in which HDHP and self-pay patients receive frequent, substantial prompt pay discounts. A good rule of

⁹ Wis. Stat. § 146.905(1) (emphasis added). Wisconsin law defines “disability insurance policy” as “surgical, medical, hospital, major medical or other health service coverage but does not include hospital indemnity policies or ancillary coverages such as income continuation, loss of time or accident benefits.” Wis. Stat. § 632.895(1)(a).

¹⁰ Wis. Stat. § 146.905(2).

¹¹ 42 USC § 1320a-7(b)(6)(a).

thumb is to limit the discount to the amount that the chiropractor will save in collection costs by having the patient pay at the time of service.

5. *What if my insured patient is not an HDHP participant or has already met his or her deductible? Can I offer prompt pay discounts for covered services to those patients to reduce their cost-sharing amount?*

No. Wis. Stat. § 146.905 prohibits providers from reducing or eliminating coinsurance or a deductible required under the terms of a disability insurance policy. Although the statute does not mention copayments, like coinsurance, copayments are patient cost-sharing mechanisms. Moreover, the AG Opinion includes copayments in the discussion of Wis. Stat. § 146.905. The favorable AG Opinion on offering prompt pay discounts relies on the fact that the discount is “not related or conditioned to the amount of deductible or co-payment owed by the patient.” One could argue that offering a prompt pay discount to a patient who has a copayment obligation under his or her health insurance plan relates to the amount of copayment owed by the patient.

This inability to reduce or eliminate patient cost-sharing amounts would apply to Medicare and Medicaid patients as well. Despite a 2008 Advisory Opinion from the federal Office of Inspector General (OIG) that approved of a hospital’s prompt pay discount off patient cost-sharing amounts, Wis. Stat. § 146.905 is a state law that is outside the scope of the OIG Opinion. As already noted, Wis. Stat. § 146.905 prohibits providers from offering to reduce or eliminate cost-sharing required under the terms of the health plan. Violating the Wisconsin statute could put your license at risk for violating a state law. Wis. Admin. Code Chir 6.02(26) includes as “unprofessional conduct” violating a law substantially related to the practice of chiropractic. Arguably, Wis. Stat. § 146.905 substantially relates to the practice of chiropractic and violating that statute would constitute unprofessional conduct.

6. *What if the patient cost-sharing amount imposes undue financial hardship on the patient?*

Wis. Stat. § 146.905 permits the reduction or elimination of a patient’s cost-sharing amount in cases where the total fee owed by the patient would cause the patient “undue financial hardship.” Although the statute does not define “undue financial hardship,” it is important that a chiropractor abide by objective guidelines when determining whether to offer such a discount. These guidelines may include consideration of a patient’s income, assets and expenses; a patient’s family size; and the scope and extent of a patient’s bill. Chiropractors should apply these guidelines uniformly to all patients. In addition, the OIG has advised against advertising the discount because advertising discounts may unfairly induce patients to receive other types of care, such as medically unnecessary care, that could violate federal or state laws or insurance contract provisions.

It should be noted that the Wisconsin Chiropractic Standards of Conduct requires chiropractors who do forgive any or all of a patient’s cost-sharing obligation, such as in the case of financial hardship, to reduce the chiropractor’s claim to the patient’s insurance carrier by an equal proportion. Wis. Admin. Code Chir 6.02(29).

7. *Please give me a checklist of what I need to remember regarding prompt pay and financial hardship discounts.*

Here is a helpful checklist. Please note that this checklist is not meant to be exhaustive. Instead, it highlights the issues covered in this white paper:

- ✓ Do not advertise any discounts.
- ✓ Offer prompt pay discounts only to HDHP patients who have not yet met their deductible or to self-pay patients (uninsured or insured patients receiving noncovered services).
- ✓ Do not discriminate in terms of which HDHP or self-pay patients receive the prompt pay discounts (i.e., offer the discount to all HDHP or self-pay patients unless a patient’s insurance contract prohibits it).
- ✓ Inform the third-party payer of a HDHP or insured self-pay patient of any discount offered and applied.
- ✓ Match the amount of the prompt pay discounts to the amount of money saved from collection costs.
- ✓ Do not offer prompt pay discount to reduce or eliminate a patient’s copayment or coinsurance amount.
- ✓ Check your insurance contracts to ensure there are no provisions that prohibit you from offering prompt pay discounts.

- ✓ Offer financial hardship discounts in accordance with objective guidelines.
- ✓ Apply financial hardship discounts uniformly to all patients who meet the objective guidelines.
- ✓ Be wary of offering frequent, large discounts that may adversely affect your “usual and customary” charge.
- ✓ When offering financial hardship discounts, reduce the amount owed by the insurer in proportion to the discount offered to the patient.