Fee Arrangements

written by Richard Leslie | May 24, 2016

Avoiding Liability Bulletin – October 2008

… Once in a while, therapists or counselors ask about the propriety of charging a lump sum fee, to be paid in advance, which is to be used by the client over some period of time in the future. As an example, perhaps the therapist or counselor asks the client to pay $1500 in advance and agrees to provide a fixed number of sessions over the course of the next month or more. When asked about the propriety or legality of this kind of arrangement, I have consistently expressed opposition to it and have counseled therapists away from such arrangements for a variety of reasons, whether initially suggested by the practitioner or the client.

With respect to the legality of such an arrangement, I would recommend that anyone who wants to consider such a fee arrangement with clients should first consult with an attorney. While I have not researched the question, I have concerns that in some states such an arrangement might run afoul of insurance or pre-paid health care laws that might regulate such arrangements. Additionally, there may be other state laws that would limit or prohibit such a fee arrangement. I have not researched the question in any particular state because I believe there are other reasons that such a fee arrangement represents an invitation for trouble.

If such an arrangement were to be entered into, it would seem that a written contract would be necessary so that the terms and conditions of the arrangement are clear to both parties. If not a written contract, some form of disclosure discussing the fee, or the basis upon which the fee is to be determined, would likely be necessary. State laws usually specify disclosure requirements related to the fee that the practitioner charges. When one begins to think of the many questions that arise with such fee arrangements, it should become apparent that they are problematic. The content of the contract or the disclosure form would have to be carefully considered and drafted, and would need to be thorough in order to address the many questions that arise. Some of the questions and issues raised by such a fee arrangement follow. They are illustrative rather than exhaustive.

What period of time will the client have to use the services? Will interest be paid to the client on the balance not yet used? What if the client does not need all of the services contracted for – will the client feel compelled to continue with the therapy? Will the therapist or counselor be inclined to recommend termination and return the unused portion of the fees? Could this arrangement be viewed by the licensing board or others as exploitive? What happens after the contracted for services are rendered – is there a renewal clause? Are there any options for the patient? What other health care practitioners bill in this manner? How will insurance reimbursement be handled under such an arrangement? What is the reason for such a fee arrangement and who proposed it? Is there a clinical reason why this fee arrangement is being used, or only a business or economic reason? Does the client get the benefit of a

reduced hourly fee for paying in advance? These questions, and others, convince me that such fee arrangements should be avoided. Why complicate your professional life? As indicated above, state laws may prohibit (or regulate, in some manner) such arrangements.