

# **Waiving the Copayment: Part 2**

written by Richard Leslie | May 24, 2016

## **Avoiding Liability Bulletin - November 2010**

This topic was discussed in the last [Avoiding Liability Bulletin \(October 2010\)](#). It raised a few questions from a reader that I thought deserved mention here. The reader described a situation where the patient is unable to pay the copayment because he or she forgot the checkbook, or was not carrying enough cash. Is it okay to bill the patient in such a situation? What if the copayment is regularly billed to the client – is this okay? Does the insurance company have the right to instruct the therapist or counselor not to see the client? These questions are answered below.

It has been my view and my experience that the issue of waiving the copayment arises in a few ways. One way was described in the October Bulletin, which was to expressly agree to waive the copayment in advance. There is a more subtle way to waive the copayment, and that is a situation where the practitioner agrees to bill the patient or client for the copayment and in some way indicates to the patient, with the proverbial wink and nod, that there is no expectation of payment upon receipt and that the debt would later be forgiven. This kind of practice is typically viewed as fraudulent. On the other hand, if the patient is regularly billed for the copayment and the patient makes periodic payments, this would, in my view, be appropriate and should not be opposed or criticized by insurers (although I cannot vouch for what they may do or say).

I have never experienced a situation where an insurance company told a therapist to refuse to see a client because the client was billed for the copayment. I would think that such action could result in liability for the insurance company. I think the focus of the insurance company is on whether or not there is a good faith effort to collect the copayment called for in the insurance contract. Speaking of insurance, I want to clarify (based on what I heard from another reader) that my article in the October Avoiding Liability Bulletin regarding insurance fraud related to insurance companies as opposed to managed care companies. In managed care, the therapist has agreed to accept a set hourly fee for services performed, which may vary from company to company. With a true insurance company and an insurance policy, the therapist or counselor can charge the patient his or her usual and customary fee and be reimbursed by the insurer, less the amount of a copayment, which is paid by the patient.