

## Fees and Collections

### Avoiding Liability Bulletin - May 2015

In what manner and to what extent are fees regulated in the state in which you practice? States usually require that the patient be informed of the fees to be charged, or the basis upon which the fee will be determined, prior to the commencement of therapy. Additionally, most state laws will contain some restrictions on advertising by health professionals, usually focused on preventing and/or making it a crime to engage in false, misleading, fraudulent, or deceptive advertising. Certain marketing practices and the use of certain words in advertising may be specifically proscribed, but beyond that, there may not be much regulation of the manner in which practitioners may establish fees – both as to the amount and the time frame or manner in which the fees are to be paid. Professional associations usually have little to say about fee arrangements because of antitrust concerns.

I recently experienced that orthodontists often collect the entire amount (thousands of dollars) to be charged for specified services in advance of work to be performed over a period of two years or more. Additionally, “professional discounts” or “courtesies” of several hundred dollars are provided for those patients who pay the entire bill at the outset of treatment. Some patients may put one-third or one-half down as an initial payment, resulting in a fixed monthly amount over the next two years (the anticipated course of treatment). Only certain patients are allowed to pay monthly as treatment progresses, with no down payment being required. The California Dental Board does not regulate this manner of charging fees, does not require any specific content in written agreements, and leaves any future dispute over fees to resolution by the parties and, if necessary, by a court.

Are mental health professionals in your state permitted to charge and collect fees, in advance, for professional services to be rendered in the future (to individuals, couples, families, or groups) in a manner similar to the above? Does the law in your state proscribe certain marketing or contracting practices, or the use in advertising of certain words and phrases, with respect to fees? Should there be more state regulation with respect to “boutique” fee arrangements in order to protect consumers?

Whatever the fee agreement is, there should be evidence (e.g., documentation) that the patient was fully and accurately informed of the arrangement in advance of the commencement of treatment. Common sense, good business judgment, and ethical behavior (e.g., avoiding exploitation) by the practitioner will help to limit problems. A written agreement, where the terms and conditions of the fee arrangement are clearly and fully spelled out, can also help to avoid a future dispute.

