

# Freebies, Waivers, Copays Edit 3

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## SUMMARY KEYWORDS

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## SPEAKERS

Janessa Nelson, Megan Harkins, Wendy Rubas, Intro Music

- I** Intro Music 00:02  
Welcome to Working Smarter, concise compliance conversations featuring Wendy Rubas. Sponsored by VillageMD primary care physicians practice medicine, the way you always wanted data resources and clinical decision support to care for your patients inside and outside the exam room.
- W** Wendy Rubas 00:22  
Hi, welcome to Working Smarter. I'm Wendy Rubas, General Counsel of VillageMD. My pleasure and honor to be here today with Megan Harkins, Assistant General Counsel here at VillageMD. Megan, welcome. Thanks for having me back. It's so great to be recording this. We've been talking about doing this, I think for a number of years, right? For sure, at least a couple weeks since I've been here. And what we're talking about today is what we call freebies waivers and co pays for patients. And there's a lot of rules, and they're not intuitive. So we're going to kind of walk folks through them today.
- M** Megan Harkins 00:57  
Because Yeah, if I mean a patient needs services, or they need certain medical supplies, why why would that be an issue?

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Wendy Rubas 01:05

That's the question we get asked a lot. And I like to say this is why we can't have nice things. So there are cases out there that, you know, are high profile at different times where freebies, waivers and co pays get abused. And so for example, there's cases where an emergency room starts sweeping up homeless patients to bring them in and be able to provide, you know, billing and revenue for the emergency room. There's cases of unscrupulous practitioners who went around with metal vans and just picked up people and everybody got podiatry that day, that kind of thing. And so there are reasons based on these examples that you can understand. And first of all, there's a concern about over utilization. The second thing is, you know, as we all know, we healthcare, the cost of health care has gone up, one remedy that payers have imposed, to try to manage the cost of health care is to shift some costs to the patient so that every time a patient goes to use a healthcare service, they have to pay a little something. And the idea behind that those co pays or deductibles, or however they're structured, is that the consumer will have some alignment and incentive to not over utilize. So when you waive those things, the concern is that you've tampered with that benefit design, which was intentionally designed for an over utilization concern. And finally, when you have charges, and we'll talk about this a little bit later, but when you have charges, and you and you waive them, or you you create a different cost structure for a certain subset of patients, it can cause payers like Medicare or even commercial payers, to challenge that they should be subject to those same discounts. It's it interferes with the usual and customary charge schema. And so this is the reason we have these rules. Although, Megan, I think what we've seen really in the time, since you've been here at VillageMD, this landscape is changing fast as value based care becomes more of a priority for our programs.

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It is absolutely and I think that's just because of the focus then of where we're trying to, I don't want to say steer patients, but where patients are going to get care. And relatedly. You know, there's there's a lot of reasons why we want to make sure that we're on the right side of this on the value based care side. And we're doing it for the right reasons. And that could range from anything from breach of contract with our commercial payers, to exclusion from the federal health care programs, which most know, if you can't bill for Medicare, Medicaid, Medicare Advantage, it's really hard to have a continued healthcare book of business.

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Wendy Rubas 03:57

Right? So these are enforced, and there are consequences. And there's lots of rules. So let's

just sort of try to go through and Meg and I think we would say, a modern healthcare law department today, we get these questions a lot, right. A lot, almost every other week. Yeah. So we're going to sort them out today. So the first kind of umbrella question, which is really many, many questions within a question that we get is, hey, Wendy, hey, Megan, can we just wave these co pays?



04:30

Great question. Short answer is that it's complicated. If you're continuously just waiving patient co pays, you probably should call legal counsel to make sure that they've signed off on it, and that we're sticking within specific safeguards. And there are some exceptions to this, which we'll talk about in a couple of slides.



Wendy Rubas 04:50

Yeah. So So the answer is probably not, but maybe. Which is the kind of answer we love as lawyers. Okay, so let's go into some of these other exceptions.



05:03

So Wendy, can we give patients a discount if they provide payment at the time of service?



Wendy Rubas 05:08

The first thing I would say, just as a caveat, state law varies. So let me just say that you have to check your state law. But absent that, the short answer is, you can probably do this Yes. However, it's not a carte blanche to give any discount that you want. It has to be reasonably related to the savings from the prompt payment. So what that means is, the assumption is that if somebody is paying you upfront at the time of service, you don't spend money on an invoice, you're not spending money on collection, you know, all of those back office things that have to happen. You don't have to do so the recommendation would be do a calculation doesn't have to be exact, but at least a good faith calculation of what that savings is. And the discount can reflect that.



05:54

And then maybe loop in legal counsel, right, when do you so make sure that we've got some time? Yeah. record on file?

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Wendy Rubas 06:00

Well, it's a good time if you're at VillageMD, because obviously we're here to help. But if you're not, then yeah, you should work with your legal counsel to document that for sure. Okay, Meghan, here's one for you. What if the patient has financial need? Do you have to collect no matter? What?

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Yeah, Wendy, that's a great question, especially when we're talking about making sure folks from any socio economic background has access to care. And so the short answer is, yes, there are several factors that we would need to consider. And typically, this isn't something to that you would advertise. Rather, the best practice I would say is to have a policy in place that will help guide the organization, then through this process, and certain forums that you know, discreetly, you ask the patient to fill out, this doesn't mean that you need to be asking for copies of you know, their their tax statements. It's a good faith determination. And so assuming that the patients are truly in financial need, we, as a healthcare organization, don't want to turn away a patient who probably needs the care.

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Wendy Rubas 07:09

So this is a funny rule, in some ways, archaic now. And you can see, if you're watching along, there is a specific prohibition on advertisement that harkens back to those abuses I mentioned at the beginning, where somebody would have an ad in the paper, hey, you know, free ride, and come on down, and we won't, we won't collect your copay, you know, or if you have financial need, like, let me just Jen up a bunch of Medicare billing. So so that's the reason for that non advertisement that's becoming outdated somewhat today as we look at health equity, as we look at in a value based world, but but it still is there. And then the other thing that's kind of evolving, our understanding is there used to be this thing about, well, you can't just take their word for it, okay, you have to actually do some determination. And that, you know, got really carried away in a lot of cases and put people really through this very invasive thing. So there's a movement to sort of change that and say, Well, if you're on another Republic program, we're going to assume that they did the checking, or there's other ways that we can sort of get to that good faith determination without doing a invasive and expensive time consuming review. But the point is, it's not just offered up as a pretext or a ruse to waive co pays for everybody.

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08:29

So when you another question that we get, often is whether we can offer patients a self

pay discount, and how that then is also different from from that prompt pay discount me we talked about already?

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Wendy Rubas 08:43

This is a hard one. I mean, there's a complex web of laws and rules here, state and federal. We used to just go, No, you can't. And then we felt smart, and we sort of moved on, then we had changes in federal law, really through the Affordable Care Act and other changes that required us hospitals, at least to give a discount for self pay patients and calculate it a certain way. And so the short answer is, yes, you can probably work something out the risk that you have to manage is the usual and customary charge rule. So that if every self pay patient gets a 10% discount, that jeopardizes your ability to say you have a usual and customary charge that's going to Medicare. And you can see some high profile cases, even recently, with some pharmacy matters and some other places where they started doing this. So the bottom line here is just this is a complicated one, just please call Meghan Harkins for the answer. Thanks for the volunteering. You're welcome. Megan, this is an age old practice we know that physicians tend to give professional courtesy to other physicians or healthcare providers, where what is the rule on that? Yeah.



10:00

Great question, Wendy. And like you said, this is sort of an age old practice. And so short answer is yes. But don't get too carried away. The ama has come out with guidance. Your State Medical Board may have similar guidance. Essentially, it boils down to like, if you're going to do it, it's probably wise to have a policy in place that then you follow.

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Wendy Rubas 10:22

Yeah. And there's sort of a wink wink that goes on. So you know, but but if it becomes a substantial practice, you should probably be careful and get some legal advice.



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So another question for you wondering is whether we can give freebies to patients, you know, like a water bottle or a pen, or even like certain services.

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Wendy Rubas 10:47

The rules here are changing for the better. There's always been this sort of exception and

the safe harbors that allow you to give an inexpensive item. And there's this \$75 annual cap. So if you give a water bottle, and then a pen, and then which has this crazy requirement, in some ways that you're going to be able to trap that, which is just like really hard to do. Okay. So there's always been this de minimis exception. Megan, I think there's another exception for preventative care. Can you explain that one?



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Yeah. So I guess with the recent changes, with the starker, anti kickback rule, there's certain exceptions for preventative care items or services. Now, the list is limited. It's not, again, a carte blanche pass to just give things away to patients. If it's typically reimbursable by Medicare, and it's not like a gift card, there might be an exception where we could provide provide that to patients that free of charge.



Wendy Rubas 11:47

So but this is where we're starting to see some good movement, because, you know, I have to say, what I sort of come to as a lawyer is when people ask me these questions, and I have good clients operating in good faith. And they're not spreading around in the neighborhood with the minivan trying to do you know, some of the abuses that we talked about, I usually make a decision based on is it good for the patient's care. And if it is, then we should do the right thing by the patient. That's not exactly been in the rule. And so we're seeing movement now. And recently, I want to say maybe the last two to three years, where we have a new exception, that's basically if it helps a patient access medically necessary health care services. So this is basically like, you can give them a ride. You know, this is where when you draw bright lines, you create absurdity. So we have these abuses with the minivans. And then we had a problem where like, people can't get to the doctor, or you can't get them home, and you're afraid to do free things, which makes no sense. And so this allows us just to do what's reasonable and good and common sense, which is really welcome in this environment.



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Especially like you said, as we're moving towards value based care, and population health management, these are key items that patients need in order to be on top of their healthcare and to make sure that their providers are also looped in as well. So you know, if a patient has diabetes, and they need a glucose monitor, you as a provider would hate the the excusable, like the patient can't, can't afford it and can't can't get it. It's just a absurd barrier to care where that glucose monitor would help them take, take charge of

their health care and better manage it.

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Wendy Rubas 13:34

Right. So that brings us that was a good segue, Megan, because that brings us to another one of these newer exceptions, which I think is great. which basically says if it's part of a value based arrangement, and it's helping coordinate or help them with their care, Now, that doesn't usually involve cash, which makes sense. And it has to be something that the doctor thinks they actually need. We see lots of abuses in the DMV world still, where we have, you know, task forces and and, and fraud alerts and things about just shipping people things they don't need. So can't be something like that. But if it is something they need, the value can be way higher than what we talked about with the de minimis. And it's just a lot bigger of a lane just to say, Do what's needed for the patient. So we do recommend, it's always a good idea when you're dealing with this kind of stuff, just to have a document a memo or some type of thing in the file, just the rationale describing the scope of the program, etc. But this allows us to really just in a value based care world where you're not getting paid for that patient coming in, so it's not the same overutilization worry, and allows us to do what we need for our patients, which is a welcome change,

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especially with the sensitivities around the rising cost of health care, engaging patients in this way. And going through that analysis, you're you're you're taking away that argument that we are truly, you know, increasing the cost of care because a better managed patient is going to often correlate with a lower cost of care. So yeah, making that investment in the patient and the patient's health is looked at in a different perspective is absolutely a welcome change and opens up a lot of doors, both for patients and providers to then partner together to figure out how to overcome some barriers to care.

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Wendy Rubas 15:29

Right. So there's some other rules, we won't go into the details on. But there's waivers that are permitted as part of a CEO's now part of DC ease, or whatever those are called now. But But if you're working with an ACL, that's got to go through your ACL board and so on, but but again, just another place, we're seeing movement. So Megan, thank you so much for joining us today. Thank you for having me. And for our listeners, we do have our key takeaways. It's something we like to do that's available on our website, which our website is



Janessa Nelson 16:07

vmdworking smarter.com Wendy.



Wendy Rubas 16:10

Okay, the executive producer butting in here. Thank you. And so. So that's available on our website. Thank you. I also want to just mention that we now have the content available in a couple of different ways. So we do have the closed captioning available on Vimeo. And if you prefer to read the content, rather than Listen, it's available on a download or a transcript. Also available on our website. VMD. working smarter, calm. So hopefully those options are useful. So last thing I want to just ask our listeners, it's really helpful if you give us a rating. Well, a five star rating. And if you leave a comment on the apple podcast app, it's also very helpful to help other people find the podcast. So thank you all for your help. And Megan, always a pleasure and I hope you'll come back sometime soon. Looking forward to it.



Intro Music 17:04

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