

CONSIDERATIONS FOR PRO BONO PHYSICAL THERAPY SERVICES

Solution	Issue/Concern	Notes
I'm an employer/clinic that wants to provide pro bono services		
<p>Use employees, not independent contractors.</p> <p>A PT practice which provides pro bono services must do so through employees and not independent contractors, as the penalties for misclassification are great.</p>	<p>Employers may not utilize independent contractors.</p>	<p>Misclassified workers may claim: unpaid overtime and minimum wages; premiums for missed meal and rest breaks; reimbursement for work-related expenses; unpaid unemployment insurance premiums; liquidated damages; attorneys' fees; and interest.</p> <p>California Labor Code section 226.8 provides for civil penalties ranging from \$5,000 to \$15,000 per violation. Penalties increase to \$10,000 to \$25,000 if the misclassification is willful or part of a pattern or practice.</p>
<p>Use the same level of supervision you would for paid services.</p> <p>Practices must train, supervise and monitor any pro bono services to the same extent as paid services.</p>	<p>Under the principles of <i>respondeat superior</i>, an employer in California can be held vicariously liable for its employees' negligence. This principle applies when:</p> <p>A. An employee is acting within the ordinary scope of their employment; and</p> <p>B. As the result of the employee's wrongful actions, someone is injured.</p>	
I want to use students		
<p>PT employers looking to provide pro bono services should do so through an organization designed for students and volunteers to provide pro bono services and have the necessary legal structure and liability coverage to comply with the law in</p>	<p>Students who have no educational or employment connection to the clinic where they volunteer create the risk of wage and hour violations under California law if there is no educational credit and supervision in how their services are implemented.</p>	<p>PTs and PTAs who are interested can contact the National Association of Free and Charitable Clinics (NAFC) to locate those closest to them.¹</p> <p>A list of organizations can be found on the CPTA and APTA websites.</p>

¹ See <https://nafcclinics.org/>.

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<p>multiple jurisdictions to avoid the risks imposed by California law.</p> <p>PTs and PTAs looking to volunteer their time should also do so through such organizations.</p>		
I'm a PT/PTA who wants to provide pro bono services		
<p>Any pro bono PT services must be delivered by experienced, competent, and thorough practitioners.</p>	<p>Regardless of charges or who provides care, PTs must comport with the standard of care and scope of practice. The PT Board will still enforce requirements for recordkeeping, supervision of aides and assistants, direct access requirements, and all obligations under the Physical Therapy Practice Act and Regulations.</p>	<p>Providing pro bono services utilizing lesser experienced practitioners can pose a greater risk.²</p>
<p>Because these can vary, we recommend reviewing them with legal counsel before agreeing to provide service as pro bono to ensure the services conform with the agreements. Often, no special allowance for a reduction in the charges is given by the private payer just because the service was free.</p>	<p>Pro bono PT and PTA services for patients who have insurance coverage with a private commercial payer or other nonfederal third-party payer must be performed in compliance with that payer, hospital, clinic or institution's payment agreements.</p>	
<p>Waiving costs for copays and/or deductibles, even with the intent of making the service affordable to the patient, is often not permitted depending on the terms and conditions of the payment agreement.</p>	<p>Deductibles and copays for PT services are regularly considered part of the medical service contract and/or agreement with a private third-party payer, a subscriber, and the medical provider.</p>	<p>Practitioners can run into allegations of insurance or billing fraud when similar services are "valued" differently.</p> <p>This inconsistent valuing of services can lead to audits and inquiries, and even allegations</p>

² Examining a Board complaint for negligence from the perspective of a license defense lawyer, a complaint for negligence in the scenario of a pro bono patient relationship or when an intern or volunteer or trainee provides care, will be far more difficult to defend. The insinuations of cutting corners or lack of care or experience cannot be avoided.

Solution	Issue/Concern	Notes
<p>Under private payer agreements, if a patient has a copay, the PT should attempt to collect the copay. The same is true for charging the value of the services. The PT may be bound by the contract to treat patients equally, not charge one carrier more than others, and to truthfully represent the value of the services.</p> <p>DHHS and OIG have provided guidelines on how to offer hospital discounts to those who cannot afford their hospital bills.³</p>		<p>of insurance fraud, and can be an admission that the PT is overvaluing services.⁴</p>
<p>There are a number of exceptions and safe harbors to the federal Anti-Kickback Statute, but they are complex and should be analyzed with legal counsel.⁵</p>	<p>If a PT is a Medicare provider, they cannot provide pro bono services and avoid submitting a claim to Medicare. Because the waiver reduces the amount the patient pays for services, it may induce the patient to seek more Medicare services, and thus, may be an unlawful kickback.</p>	
<p>Practitioners and employers alike should ensure their insurance provides such coverage before offering pro bono services.</p>	<p>Requirements for liability insurance protection do not change when the PT services are free. If a claim is made arising from pro bono PT service, the errors and omissions liability policy for a respective PT may not cover that pro bono treatment depending on the specific terms and conditions of the professional liability policy.</p>	

Rev. 07/27/22

³ <https://oig.hhs.gov/documents/other-guidance/908/FA021904hospitaldiscounts.pdf>.

⁴ For more information see *The Importance of Collections/Avoid Writing Off Copays*, Heidi Jannenga, DPT, WebPT at <https://www.webpt.com/blog/importance-collections-avoid-writing-copays/>.

⁵ See 42 U.S.C. § 1320a-7b and <https://www.ecfr.gov/current/title-42/chapter-V/subchapter-B/part-1001/subpart-C/section-1001.952>.

Below are issues that apply to anyone providing pro bono physical therapy services, whether you are a PT, PTA, or an employer of PTs and PTAs.

Issue	Our Recommendations	Notes
<p>Services must comply with requirements of preexisting insurance plans.</p> <p>Pro bono PT and PTA services for patients who have insurance coverage with a private commercial payer or other nonfederal third-party payer must be performed in compliance with that payer, hospital, clinic or institution’s payment agreements.</p>	<p>Because these can vary, we recommend reviewing them with legal counsel before agreeing to provide service as pro bono to ensure the services conform with the agreements. Often, no special allowance for a reduction in the charges is given by the private payer just because the service was free.</p>	
<p>Copays or deductibles cannot be waived.</p> <p>Deductibles and copays for PT services are regularly considered part of the medical service contract and/or agreement with a private third-party payer, a subscriber, and the medical provider.</p>	<p>Waiving costs for copays and/or deductibles, even with the intent of making the service affordable to the patient, is often not permitted depending on the terms and conditions of the payment agreement.</p> <p>Under private payer agreements, if a patient has a copay, the PT should attempt to collect the copay. The same is true for charging the value of the services. The PT may be bound by the contract to treat patients equally, not charge one carrier more than others, and to truthfully represent the value of the services.</p>	<p>Practitioners can run into allegations of insurance or billing fraud when similar services are “valued” differently.</p> <p>This inconsistent valuing of services can lead to audits and inquiries, and even allegations of insurance fraud, and can be an admission that the PT is overvaluing services.⁷</p>

⁷ For more information see *The Importance of Collections/Avoid Writing Off Copays*, Heidi Jannenga, DPT, WebPT at <https://www.webpt.com/blog/importance-collections-avoid-writing-copays/>.

	DHHS and OIG have provided guidelines on how to offer hospital discounts to those who cannot afford their hospital bills. ⁶	
<p>No Pro Bono for Medicare providers.</p> <p>If a PT is a Medicare provider, they cannot provide pro bono services and avoid submitting a claim to Medicare. Because the waiver reduces the amount the patient pays for services, it may induce the patient to seek more Medicare services, and thus, may be an unlawful kickback.</p>	There are a number of exceptions and safe harbors to the federal Anti-Kickback Statute, but they are complex and should be analyzed with legal counsel. ⁸	
<p>Liability insurance is still required.</p> <p>Requirements for liability insurance protection do not change when the PT services are free. If a claim is made arising from pro bono PT service, the errors and omissions liability policy for a respective PT may not cover that pro bono treatment depending on the specific terms and conditions of the professional liability policy.</p>	Practitioners and employers alike should ensure their insurance provides such coverage before offering pro bono services.	

⁶ <https://oig.hhs.gov/documents/other-guidance/908/FA021904hospitaldiscounts.pdf>.

⁸ See 42 U.S.C. § 1320a-7b and <https://www.ecfr.gov/current/title-42/chapter-V/subchapter-B/part-1001/subpart-C/section-1001.952>.