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Dentistry and the Law: What Is Illegal About Disclosing Fee Schedules?

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By Dan Schulte, JD
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What Is Illegal About Disclosing Fee Schedules?

Question: I have a question about dental plan fees. At least one dental plan pays dentists new to its network less than it pays dentists who

have been in its network for several years. Several dental plans pay dentists in different geographic areas different fees for the same services. I have always wanted to know how the fees that I'm paid by the dental plans I participate with measure up to what is paid by other dental plans, in different areas, and what the age-based differences are when applicable. Dental plans consistently refuse to publish their fee schedules or even tell me on a percentile basis where my fees are. Some dental plans claim it would be an antitrust violation or otherwise illegal to make fee schedule information generally known. Is this true or just an excuse?

Answer: An excuse.

Why dental plans do not disclose their fee schedules only the dental plans can answer. Perhaps they do not want to make it easy for their competitors to know what they pay, and/or easy for its network dentists to compare these fees to those paid by competing dental plans. In other words, they may fear the competition this would create.

Disclosing fee schedule information, in and of itself, would not be a violation of antitrust or any other law. An antitrust violation occurs when competitors enter into agreements or understandings to engage in activities that unreasonably restrain competition. An agreement between dental plans on what fees they will pay and an agreement between dentists to only participate with certain dental plans and not others would be examples of "per se" violations of the antitrust laws. This means that the very existence of the agreement is all that must be proven; no defense of the agreement is allowed.

Dental plans choosing to make their fee schedules known does not mean there is any agreement or other joint activity among the dental plans, nor does it restrain

competition in any way (in fact, competition may be promoted by the disclosure because it is easier for dentists to decide which networks to join). In order for the antitrust laws to be implicated in any way there would first have to be some agreement between two or more dental plans — for example, an agreement that fee schedules will not be disclosed, that fees will be lowered or otherwise jointly fixed at some amounts, etc.

Likewise, there is no other law that I am aware of making the disclosure of a fee schedule by a dental plan illegal. The truth is, a dental plan's reason for not disclosing its fee schedule or other information regarding its fees likely is due to its own business objectives and not due to any legitimate concern with violating antitrust or other laws.

It should be noted that the same is true for disclosures you make regarding the fees you are paid — you are free to make whatever disclosures you wish without violating antitrust or other laws. The only caveat is that you must honor any confidentiality or other nondisclosure obligations that you are subject to contractually.

Asking for a fee schedule is a legitimate request. You should know what you will be paid for your services in advance of joining a network, and be subsequently provided with fee schedule information to enable you to decide whether it makes sense for you to remain in the network. ●

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