SECTION

7

FINANCIAL ASPECTS

CHAPTER

33

Fees, Credit, and Collections

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The matter of fees is important, far beyond the mere question of bread and butter involved.

Abraham Lincoln, *Notes for a Law Lecture*

Before the publication of Charles Percival's enlightening work, *Medical Ethics*, in 1803, physicians routinely charged for services based on the ability of patients to pay rather than on a fixed fee schedule. His ideas on the ethics of payment for services had a profound influence on medicine in the United States; in time, the prevailing point of view was that each patient should be charged the same amount for the same service.

Optometry has followed a similar evolutionary process in the setting of fees. Practitioners working in commercial environments at the start of the 20th century were subjected to "free examination" promotions by the businesses employing them, and it was common practice to "charge for glasses" in a lump sum rather than to separate fees into amounts for services and for materials. Gradually, the use of fee schedules and the separation of fees for services from materials by professional optometrists exerted an effect on the profession, causing the value of services to be given greater emphasis. In the mid-1960s, a powerful influence on fee setting began to be experienced by the profession: third-party reimbursement, principally by the government. Through Medicare and Medicaid, fees were established for services rendered to the elderly and to indigent children and adults. For other individuals, private insurance plans offering reimbursement for examinations and to a lesser degree, for ophthalmic materials established the fees that could be charged. The effect of these programs was to change the traditional mode of payment (from patient to practitioner), inserting a third party into the process, and to take the ability to set fees out of the hands of practitioners. Medicare, in particular, has wielded considerable influence on fee schedules. After the

Medicare "parity" amendment was enacted by the United States Congress in 1986, optometrists examining Medicare-eligible patients were able to receive reimbursement for services within the scope of licensure that led to the diagnosis or treatment of disease. Reimbursement levels were based on a fee "profile" for the optometrist's area of practice. Today, practitioners are reimbursed 80% of the "reasonable charge", an amount that is determined annually by Medicare. The other 20% is paid by the patient as co-insurance (see Chapter 34). But to receive full Medicare reimbursement the practitioner's "reasonable charge" must be equal to Medicare's "reasonable charge".

In addition, fees charged to Medicare patients for services cannot be more than the fees charged to patients younger than 65 years of age for these same services. As a result, fees for services have received a considerable amount of revision for patients of all ages.

Charges for ophthalmic materials have been subjected to less regulation because few insurance plans provide complete reimbursement for spectacles or contact lenses, offering instead a partial payment or credit toward purchase. The difference in cost is paid by the patient. Under Medicare, the only ophthalmic materials for which reimbursement is provided are the initial spectacles or contact lenses used for the correction of aphakia or pseudophakia. The setting of charges for ophthalmic materials has been an ongoing problem for optometry, one that is confounded by the ethical obligation to delineate charges for services from those costs associated with materials.

Ethically, a professional has the responsibility to inform patients of the charges for care and how they were determined. Abuses, such as "free" examinations, hid the practitioner's fee for services in the charge for spectacles, and "bait and switch" tactics lured patients to practitioners for the purpose of selling eyewear at high markup rather than the inexpensive eyewear advertised. Even worse, "rebates" paid to a prescribing practitioner for ophthalmic materials sold by a dispenser kept from the patient the practitioner's financial incentive to "steer" the patient to the dispenser. These and other unsavory practices led to a demand for reform within optometry and to the passage of rules of practice that emphasized the obligation to set uniform fees, separate charges for materials from fees for services, and avoid economic discrimination in patient care.

Within this historical context, contemporary practitioners still struggle to determine the amount to charge for services, the proper pricing of ophthalmic materials, the fair apportionment of charges between services and materials, and the ethical presentation of fees to patients. The most fundamental of these problems, particularly for a beginning practitioner, is determining a fee schedule. Regardless of the fees charged it is important to understand that unlike the sale of a commodity, there are no guarantees for which patients should rely nor a guarantee for which a patient should argue negates the validity

of a bill for services rendered. Doctors, lawyers, and other professionals give their time and expertise and charge fees accordingly. For that fee, they do the best job they can for their patients or clients. They do not and cannot promise success nor is their fee contingent on that success.

FEES

The determination of a fee schedule must be divided into two parts: setting fees for services and establishing charges for ophthalmic materials. Because optometrists not only provide vision services but also dispense a product, two different methods of setting the fee schedule must be used. As recounted, in the past the services of the optometrist were frequently undervalued, often amounting to less than the chair cost (i.e., the cost per patient of keeping the office open and operating), while the price of materials was increased twofold to fourfold for purposes of sale, so that a reasonable profit could be realized. In addition, the fee for both examination and spectacles was presented as one charge, usually being described as "the cost of the glasses." Much of the effort to promote professionalism during the past 2 decades has been directed toward the elimination of the "single charge" concept. This effort has been aided by the Federal Trade Commission's "Eyeglasses Rules," which granted patients an unfettered right to the spectacle prescription, allowing them to take the prescription from an optometrist charging a fee for services to a less expensive dispenser to be filled. Aid also was received from Medicare "parity" legislation because its fee "profiles" for services caused optometrists charging lower fees than those described on the profile to recognize that their services were undervalued. The result of this reconsideration was an increase in the relative value of professional services and a devaluation of the charge for ophthalmic materials. Today, the primary emphasis is on fees for services.

Fees for Services vs. Insurance Reimbursement

Although fees for services have become the key consideration in optometric reimbursement, the ability of optometrists to establish a reasonable return for their professional skill has been significantly influenced by the steady emergence of vision care as an insurance benefit. Because of the success of managed care programs, such as health maintenance organizations (HMOs) and preferred provider organizations (PPOs), and the dictates of companies providing vision care benefits to workers, fees received for services increasingly have been determined not by practitioners but by these entities. If many workers enrolled in an insurance program are the patients of an optometrist or would likely become the patients of an optometrist, the reimbursement offered by the insurer must be accepted by the optometrist or these patients will be lost. The fee paid by the insurer is often well below the optometrist's usual and customary fee, but it is accepted by the optometrist in return for the prospect of serving a sizeable population of patients. The optometrist's autonomy over fee setting is lost in such an arrangement, but the ramifications extend beyond fees to include professional and ethical concerns such as the time to be allocated for examination and the testing to be performed. Since the optometrist receives less compensation for each examination, there is a natural tendency to attempt to increase the number of examinations within the same unit of time. Such a development may result in less-thorough examinations, to the potential detriment of patients. This effect is certainly not what patients had in mind when the insurance program was initiated.

The determination of fees to be charged for services is complicated therefore by the erosion of the traditional payment philosophy of health care, in which the practitioner sets the fee to be paid and the payment was received directly from the patient. The intrusion of third parties—government and the insurance industry—has created a complication, in which the fee to be received by the practitioner is most often set and paid by the third party. As a result, true "fee for service" has rapidly diminished as the most common payment mechanism for optometric health care services.

Given these developments, when optometrists do establish fees to be charged for professional services, several factors must be considered: the optometrist's "chair cost"; the fees for like services charged by other practitioners in the community; the fees paid by third parties (most notably in the Medicare program) for like services; and the optometrist's determination of the value of individual experience, skill, and knowledge.

Determining "Chair Cost"

If an optometrist determines the overhead costs for patient examinations and divides this amount by the time spent by the practitioner performing these examinations, the cost of providing these services can be calculated. The "chair cost" is the expense incurred by the optometrist to perform examinations, usually expressed as an hourly amount. If the hourly fee derived from patient fees is less than this figure, the optometrist is operating at a loss. An optometrist must know the "chair cost" because it exerts an obvious effect on the fee to be charged for services. The examination fee must be at least this amount, or the optometrist will not be able to sustain an economically viable practice. The "chair cost" therefore represents a minimum fee for services, below which the optometrist cannot operate the practice (or at least continue to operate the practice at its current level). While fixed costs (e.g., salary, rent, utilities) divided by the number of hours available for patient care yields a dollar value below which some practitioners feel money is lost if it is not charged as a minimum, such a rationale is only completely valid if those hours (patient slots) would otherwise be filled. For example, the airlines can sell a seat for $50 and make money if that seat would have been otherwise unoccupied because the "chair cost" is essentially the cost of a soft drink and a bag of peanuts. Often a practitioner is willing to provide examination slots at less than the usual and customary fee to grow a practice or to fill the chair with patients, even if from a discounted insurance plan, as they create the possibility of being able to appoint family members who are not covered on that same plan at usual and customary fees.

Comparison With Other Practitioners

Within the group of optometrists in any community, there is a range of fee schedules from which a minimum, a maximum, and a mean charge may be derived. A new practitioner entering a community to start a practice should be familiar with this range of fees and should consider it when attempting to establish the fee schedule for a new practice. In general, it is preferable to be neither the lowest nor the highest in such a situation. For an established practitioner seeking to alter fees, this information also is valuable and should be considered during the decision-making process, along with the other factors previously enumerated. It also can be useful to determine the fee schedules for ophthalmologists in the community, particularly if optometrists work with them. This information allows the fee schedule finally chosen to fit within the economic boundaries of the community's ophthalmic marketplace and the practitioner to understand where within that marketplace individual fees may rank.

Fees Paid by Third Parties

A practitioner cannot determine fees for services without being cognizant of the fee schedules established by third parties such as the government and insurance companies. Because of the significant use of optometric services by Medicareeligible patients, the influence of government reimbursement schedules is obvious. Practitioners cannot charge more for the same service to patients who are not Medicare-eligible than to patients who are Medicare-eligible, so the reimbursement allowed to Medicare providers must be considered when establishing a fee schedule or changing fees. One particularly important influence is the determination of the level of skill involved in the service. Because of the requirements of Medicare, the fee to be charged must reflect the skill exercised during the examination. As a result, fee schedules are organized to reflect these differences, not only for Medicare patients but also for patients of all ages (see Chapter 34).

Individual Experience, Skill, and Knowledge

Every practitioner should consider individual capacity when pondering the fees to be charged for services. Generally speaking, as a practitioner grows in experience and skill, fees are adjusted to reflect the additive effect of the knowledge acquired in these years of practice. This individual factor should be tempered, however, by the economic realities of the ophthalmic marketplace, the prevailing fees in the community, and other considerations previously described.

An optometrist must evaluate all these factors when deciding on a new fee schedule for services or the alteration of an existing fee schedule. A different set of influences is exerted on the decision making necessary to determine the charges for ophthalmic materials, discussed later in this chapter.

Legal and Ethical Issues involving Fees

In the great majority of jurisdictions, it is unethical for an optometrist to split professional fees with a for-profit business entity. Similar legal restrictions prohibit fee-splitting by other health care professionals such as physicians and dentists. Fee-splitting occurs when an optometrist divides income earned from providing services with a nonlicensee business organization. The legal issue raised by fee-splitting is that it permits a business organization, by receiving part of the optometrist's payment for services, to "practice optometry" just as if it were a licensee.

The type of optometrist who is uniquely vulnerable to this problem is an independent contractor working as a selfemployed doctor for a commercial business entity. An independent contractor may be defined as "One, who exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to the control of his employer except as to the result of the work." Thus control is the essential issue. Fee-splitting would result when the independent contractor worked on a per diem basis: For example, an optometrist working at a commercial practice for $400 per day who generated $900 from services would earn $500 that would be paid to the business entity, thereby allowing the business to receive a portion of the optometrist's fees for services. This division of services income may be illegal and subject the optometrist to disciplinary action from a state board.

Business entities used by optometrists in private practice (e.g., professional associations or corporations, limited liability companies, or subchapter S corporations), hospitals, and not-for-profit clinics (such as HMOs) are exempted from fee-splitting provisions. Therefore an optometrist who works for one of these business entities as an employee or independent contractor may be paid a salary without concern for feesplitting. An optometrist who works as an employee or independent contractor for another optometrist or ophthalmologist may be paid a salary or on a per diem basis because these practitioners are licensees and entitled to receive fees for services income, even if it is earned by an employee optometrist. Fee-splitting is not a legal issue when one licensee works for another.

There are special rules for "fill-in" doctors (called *locum tenens*) who occasionally substitute as independent contractors when practitioners are absent. They are usually paid per diem, and patients pay the absent doctor's fees or—if they are insured—the substitute files the insurance claim under the absent doctor's provider number. Thus an optometrist who occasionally fills in for another practitioner is not subject to fee-splitting, even though payment is on a per diem basis.

Federal Regulation

There is significant federal regulation of fee-setting and reimbursement for health care services. An important legal issue involves "kickbacks" under Medicare. The Medicare law states the following:

> "Whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind, (A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may

be made in whole or in part under a Federal health care program, or (B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program, shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than 5 years, or both."

The term *remuneration* is broadly interpreted and is not limited to direct financial compensation. For example, if a patient with a cataract is referred by an optometrist to a particular surgeon because the patient is always returned to the optometrist for postoperative care, Medicare can allege the referral by the ophthalmologist is a "kickback" and fine or even terminate the doctors from the Medicare program. The optometrist might also be subjected to legal sanction by the state board of optometry.

"Guaranteed" minimum income paid by a business entity employer can be construed as a kickback since the income is paid to assure that the employer will continue to earn a profit from the sale of eyewear prescribed by the optometrist. Minimum income guarantees or bonus income paid by an employer optometrist (or physician) to an employee optometrist does not violate the law because it is paid by a licensee.

Another law, the federal False Claims Act, prohibits a health care provider from knowingly presenting or causing to be presented a false, fictitious, or fraudulent claim for payment or approval; knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved; conspiring to defraud by getting a false or fraudulent claim allowed or paid.

A "claim" under the act includes reimbursement from federal programs such as Medicare or Medicaid. A provider acts "knowingly" if the provider has actual knowledge that a false claim has been submitted, or acts in deliberate ignorance or reckless disregard of the truth. No proof of specific intent to defraud is required.

An individual plaintiff (a "whistleblower") may file a civil action alleging fraud perpetuated by a health care provider, called a *qui tam* action (the Latin words are from legal terminology that translates into "who sues on behalf of the King as well as for himself"). The government may choose to conduct an investigation of the allegations and may thereafter assume responsibility for prosecution. If the government prevails, the court may award treble damages plus penalties. The "whistleblower" may receive as much as 30% of the award.

Discounting Fees

Discounts for services are often offered by optometrists, both for insured and for noninsured patients. The federal Health Insurance Portability and Accountability Act (HIPAA) contains specific restrictions on the use of discounts for insured patients and the waiver of co-payments and deductibles. Thus "routine" discounts for insured patients (e.g., Medicare and Medicaid) is not permitted. However, nonroutine, unadvertised waivers of co-payments or deductible amounts may be made "based on individualized determinations of financial need or exhaustion of reasonable collection efforts."

For fee for service patients, practitioners often offer dis counts for services if patients pay promptly or in cash. Because fee for service charges are used by practitioners to determine the "usual and customary" fee for Medicare patients, there is concern that significant acceptance of discounted fees will be construed as creating two fee schedules, with the higher one fraudulently being used for insured patients. However, the US Office of the Inspector General has held that "charges for services provided to uninsured patients free of charge or at a substantially reduced rate . . . should not be included when determining the "usual and customary" charge. Optometrists who offer fee for service patients a 10% or 15% "cash discount" for immediate payment by cash, check, or credit card after examination do not commit a violation for allowing these discounts.

Discounts for patients with insurance coverage can pose significant legal issues. If the optometrist charges a discounted fee and an insured patient receives an eye examination to obtain the promised discount on materials, does the optometrist violate the law by filing the insurance claim for the reimbursable amount rather than the discounted fee? The answer depends on the type of insurance involved.

If it is vision insurance, the insurance company has set the fee to pay the optometrist for examinations, regardless of what the optometrist charges for fee for services. Unless the insurance contract provides otherwise, the optometrist should be able to bill the insurer, as usual, even though the fee for services has been reduced.

If it is medical insurance, such as Medicare, however, the reimbursement to the optometrist is determined by the usual and customary fees the optometrist charges for a given level of service. Discounting these fees below what is usually reimbursed by these plans (e.g., the fee is reduced to $40), yet billing Medicare for the usual and customary fee (e.g., $80), results in Medicare being billed for a higher amount than non-Medicare patients who paid the discounted fees (e.g., $40) for the same services. The federal government could consider that fraudulent. Medicaid is similar, even if it is administered as a managed care plan.

Federal Stark Law

The Stark Law was enacted by the US congress to regulate referrals by practitioners to entities (such as a group, clinic, or center) in which the referring practitioner held a financial interest. If such a referral is made, any health services provided by the entity cannot be legally billed to Medicare. Hefty fines are levied for violations. The Stark Law differs from the Medicare "anti-kickback" statute in that it imposes civil penalties rather than criminal sanctions and is directed exclusively toward referrals. The Stark Law applies to referrals for cataract surgery in which the optometrist has a financial interest in the clinic (such as a referral center) in which the ophthalmologist performs the surgery. Practitioner-to-practitioner referrals, in which neither practitioner holds an interest in the other's practice, do not fall under the Stark Law prohibitions.

The Stark Law also applies to patient referrals to optical shops in which the referring practitioner has a financial interest. If such a referral is made, services or materials provided by the entity (such as eyewear) cannot be legally billed to Medicare or Medicaid. However, a "safe harbor" (exception to the rule) is allowed for group practices that wholly own a separate optical shop.

If an optometrist has no financial interest in a separate optical shop, there can be no violation. If the optometrist shares ownership with another entity or individual, a violation can occur if the optometrist's profit from the shop is based on referrals to it for the sale of eyewear. There is no automatic safe harbor under these circumstances.

To avoid Stark Law violations, an optometrist should do the following:

- Have a dispensary within the practice, or
- Have an optical shop that is owned 100% by the optometrist and is part of the practice, or
- Be part of a group practice that owns 100% of a separate optical shop (a "safe harbor")

The Stark Law provisions also apply to financial interests in clinical laboratories, surgical centers, and other business entities to which patients may be referred for care.

PRICING OF OPHTHALMIC MATERIALS

Historically, ophthalmic materials have not only been supplied by optometrists but also have been provided by opticians, optical companies, and other retail establishments. Because of this wealth of competition, it is wise for optometrists to be familiar with the pricing strategies used in the marketing of goods and services. Marketing is the process of studying the wants and needs of a target population and satisfying those needs with quality goods and services at competitive prices. Once a specific need has been identified, the marketing process involves the following four factors:

1. Design a product that satisfies the need
2. Place the product where people will purchase it
3. Promote the product
4. Set a price for the product

These four factors are interdependent in terms of both real and perceived value to the consumer of the product. For the practitioner of optometry, the "need" that has been identified is quality vision and eye health care, including ophthalmic materials. To satisfy the need for ophthalmic materials, optometrists offer a quality "product": the determination of the prescription and the fitting and dispensing of eyewear from a single source. The optometrist's dispensary serves as the place where the eyewear can be purchased. To ensure that patients are aware of the availability of these services and materials, marketing is used to both existing patients and the public. The pricing of the ophthalmic materials is based on the following three fundamental business strategies:

Neutral pricing: The price is based on the product's value to the average consumer, so that the price equals the worth of the product.

Skim pricing: The price is set to obtain the highest participation from the segment of the market that is insensitive to price, so that the price is more than the product's value to the average consumer.

Penetration pricing: The price is set at a low level to obtain and hold a large share of the price-sensitive segment of the market, so that the price is less than the product's value to the average consumer.

In the ophthalmic marketplace, all three strategies are used. In the discussion of fees for services, a neutral strategy was presented, with consideration given to the cost of delivering services, the external influence of third-party payers, and the perception of value that is based on individual skill and knowledge. A skimming strategy may be found in the pricing of elective surgical techniques such as LASIK. Services for refractive care have long been subjected to penetration pricing, to the extent that even "free" examinations have been offered to capture and hold market share.

Because of the great variety of competitors and strategies within eye care, it cannot be said that there is one best way to price ophthalmic materials. Each practitioner has to assess the patient population, the location, and the competition in the marketplace. Even so, it should be emphasized that the pricing of ophthalmic materials should not to be determined by low prices inherent in penetration strategies. The dispensing of ophthalmic materials in a professional office is quite different from the retail sale of eyewear in an optical shop. Patients appreciate the unified quality service that can be obtained in a professional office and expect a consistent value—not the lowest value—for the materials purchased.

When establishing a neutral strategy, the optometrist must assess the cost of purchasing and maintaining an inventory of frames; the expense involved in the use of staff members for the selection, dispensing, and repair of eyewear; and the proportionate cost of operating an in-office dispensary. To offset these expenses, the practitioner should consider the contribution to profit that can be made by the sale of frames and lenses. Using this approach, a practitioner can determine a "cost per unit" for eyewear, much in the same manner that "chair cost" can be calculated for professional services. The amount so calculated becomes the minimum mark-up to be added to the cost of ophthalmic materials. This amount is often referred to as a "materials service fee"; under some insurance plans this amount must be used for the pricing of ophthalmic materials. Because the costs of maintaining an inventory of frames (and providing related services) increases with more expensive materials, the markup for ophthalmic materials is usually two to two and a half times the cost of the materials. Ophthalmic lenses usually are priced in the same manner. If discounted material costs are required by some vision care plans, this factor must be built into the minimum materials service fee charged by the practice.

The price of ophthalmic materials must be organized and presented in a coherent way to patients. Spectacle frames, ophthalmic lenses, and contact lenses must be categorized in some practical manner, and charges must be set for each category. For lenses, the results are typically described on a fee schedule,

which lists the various categories and charges to be applied. Spectacle frames are priced on an individual basis, and the price is often attached to the frame with a small sticker or other means for identifying pricing.

Contact lenses have become a very competitive part of the ophthalmic materials market. There has been a gradual decrease in the markup for contact lenses and an accompanying increase in the professional fees charged for fitting and follow- up. Contact lenses are advertised and sold by third-party vendors, and because they are widely available, the markup in private practice is usually modest. Prepaid service agreements and planned lens replacement programs have been used to support the cost of providing services and materials to contact lens wearers. These approaches also join together the pricing of services and materials for the convenience of the patient.

In response to consumer demands for faster delivery of spectacles by ophthalmic providers, many optometrists have obtained in-office equipment to edge and dye lenses or apply lens coatings. The purchase price of this equipment, the cost of its operation and maintenance, the value of the time expended by employees to operate it, and other factors must be considered by the optometrist in setting the charge to patients for edging, tinting, and coating services. The prevailing charges for these services in the community also must be considered. These ancillary services can be an important source of income and can add to patient satisfaction by reducing the amount of time needed to provide eyewear after examination.

LEGAL ISSUES INVOLVING OPHTHALMIC MATERIALS

Ophthalmic materials are widely subjected to advertising and to offers of reduced cost. Sellers who employ “bait and switch” techniques—advertising inexpensive materials for the purpose of inducing buyers to purchase more expensive materials because the advertised products are “not appropriate” or “unavailable”—are subject to legal sanction. Similarly, optometrists who participate in “capping and steering” of patients—in which advertisements are used to induce buyers to obtain low-cost eye examinations, then the optometrist “steers” them to an optical shop for the purchase of materials, in return for a share of the profit—may be disciplined for unprofessional conduct by a state board of optometry.

Discounts for Ophthalmic Materials

A common tactic in advertising of ophthalmic materials is to offer discounts, often through the use of coupons. If coupons offer discounted ophthalmic materials, their provisions must not violate the optometry practice act. State laws often require that certain information be printed on the coupon and that they not be misleading. Thus coupons offered by a standalone optical or by an optometrist with a dispensary are permissible if they satisfy state legal requirements. But if patients using the coupons rarely purchase the advertised materials because of “bait and switch” tactics, the advertising may be deemed misleading and the optometrist may be held to be a participant in a scheme to defraud.

If a for-profit business entity that has hired an independent contractor optometrist offers a coupon providing discounts for both materials and services, potential legal problems arise. Many states prohibit the direct or indirect employment of agents to solicit patients because agreeing to divide or split fees received for professional services with a nonlicensee is a violation. Since an examination is required to purchase glasses, a coupon that discounts both examination and materials would create a fee-splitting arrangement. The advertisement constitutes a solicitation, and the optometrist and the business entity split the fees paid by the patient, who must be examined and obtain a prescription to purchase the discounted materials.

One other potential legal issue involves ethics. Many states refer to the American Optometric Association (AOA) Code of Ethics in their laws, and some states actually have their own code. Under these codes, it is considered unprofessional conduct for an optometrist to allow an entity to “set or attempt to influence the professional fees of a doctor of optometry.” An optometrist who discounts fees to accommodate a thirdparty advertising campaign for discounted materials could be charged with violation of the optometry law and disciplined for unprofessional conduct.

Methods of Payment

Payment may be immediate or deferred. The usual methods of immediate payment are cash, check, or credit card. If cash is paid, the optometrist receives full value for the amount charged. If a check is used, the same result usually is obtained, but a small percentage of patients will have insufficient funds in their checking account. The optometrist will be required to spend time and occasionally money in an effort to collect the amount owed. The result is less than full value for the amount charged. Credit cards allow payment to be received, but at a discount. The credit card companies customarily receive 2% to 6% of the amount charged on the card for insuring payment, and thus the optometrist will not receive full value for the services rendered.

If payment is deferred, it is because the payment is to be made by a third party or credit has been extended to the patient. In both situations, the optometrist will not receive full value for the amount billed. Third-party claims for reimbursement are subject to approval by the third party before payment; not infrequently reimbursement is delayed or payment is disallowed. If the claim is denied, the optometrist may turn to the patient for payment, but the collection of the amount due is achieved in less than 100% of cases. The same is obviously true in situations in which credit is extended to patients. Even though billing and collections efforts may be used, some payments inevitably will not be received. Again, the end result is less than complete payment for the amount charged.

Optometrists must consider carefully the method of payment to be permitted (particularly the credit policy to be

used), attend scrupulously to the billing requirements of third parties providing vision and eye care benefits, and organize workable procedures for the collection of accounts receivable. The setting of fees and their method of payment are intimately related problems that cannot be separated from one another.

One other essential consideration is the accounting system used to document the charges made and payments received for services and materials.

ACCOUNTING SYSTEM

The ideal accounting system would be simple, accurate, and require little time to use. Computers fulfill these requirements for they can be used to bill patients and track accounts with great efficiency and accuracy. Software programs can be purchased that permit individual payment schedules to be set for patients, calculate interest on unpaid accounts, and provide preprinted receipts to be mailed to the practice with payment. Tracking of accounts payable also can be efficiently performed by the computer, as can the financial productivity of the office. This versatility gives the computer an edge over other methods of financial recordkeeping.

Personal computers are used by the majority of optometrists in private practice. Software programs have been designed for use in optometric offices and offer many features that provide time-saving steps in the scheduling of appointments, recording of patient information, tracking of orders for ophthalmic materials, entering and analysis of financial records, completion and submission of insurance claims, and preparing of communications with patients (see Chapter 20).

Scheduling of Appointments

Computers also allow appointments to be easily scheduled or rescheduled, with a set of related information (such as telephone numbers) that allow for patients to be contacted by mail or telephone to verify appointment dates and times. Appointment entries usually can be linked to computerized billing for services and materials and to the recall system.

Recording of Patient Data

Some software systems permit “paperless” records to be maintained, and to provide security for entries some systems prevent changes from being made to the record after the passage of a certain period (to prevent alteration or destruction of data). The computer will print the information on a specialized form or a personalized letter or transfer it electronically to another computer. Computers also can be linked to instruments such as automatic refractors and lensometers to record patient data automatically.

Ophthalmic Materials

Computer programs can send orders for lenses and frames to optical laboratories, track the status of orders, keep track of frame and lens inventories, track frame and lens usage, use bar code scanning, and perform helpful analyses of ophthalmic materials costs and usage.

Financial Records

Software programs can be used to perform a variety of financial management functions, including the completion of day sheets, statements for patients, deposit slips for payments, bills and accounts receivables, and even to prepare checks for employees, maintain payroll accounts, and issue annual W-2 forms for employees.

Insurance Claims

There are programs that enable forms to be completed and printed for various health insurance plans, including the HCFA (Health Care Financing Administration) 1500 form (used for most medical insurance plans and Medicare) and the form for Vision Service Plan (VSP).

Communications With Patients

Cards and letters can be printed through computerized programs that generate recall notices, service agreements for contact lens patients, referral letters, thank you letters, and vision analyses. The use of computer programs allows these communications to be personalized, making them more effective with patients.

It is this versatility that makes computer programs favored over other means of data management. Regardless of the system used, the opportunity always exists for manipulation of the system by a dishonest employee and for loss of funds through embezzlement. No system is foolproof, and it is appropriate for practitioners to take steps intended to improve their familiarity with the system while at the same time hopefully discouraging dishonesty on the part of an employee.

INSPECTION AND EVALUATION OF FINANCIAL RECORDS

There are several steps that a practitioner should take to reduce the likelihood of loss from embezzlement. One is to obtain insurance protection. Although employees who handle substantial amounts of money may be bonded (a process whereby a company guarantees reimbursement to the employer for loss in return for the payment of a fee to the company), the experience that employees must go through to obtain the bond usually makes it a less desirable alternative to insurance coverage. Commercial crime coverage can be purchased by the optometrist, as part of professional liability insurance protection (see Chapter 23). Employees should be hired only after references have been verified and questioned. Employees who manage money should be informed that their work will be periodically checked. If possible, more than one employee should be assigned to bookkeeping tasks. Vigilance on the part of the practitioner can be an important deterrent to this unfortunate but too often encountered downside of practice.

CREDIT

Even for practitioners on the cash system, it is inevitable that billing of patients will be required, and for the majority of practitioners the collection of accounts receivable is a constant problem, one directly related to the necessity of billing for fees. The time, manpower, and money expended on billing and collection efforts can be considerable, particularly in practices that do not have a well-organized and coordinated system for these efforts. If billing and collections practices are inadequate, a financial loss will be incurred, one that could have been prevented if proper planning and procedures had been instituted. For these reasons, it is important for practitioners to consider the related issues of billing and collections, which may be divided into three topics: payment for services, methods of billing, and methods of collection.

This discussion concerns only the billing and collection of fees for service; it does not describe the remediation of disputes with third-party providers such as insurance companies and government agencies. For the collection of debts from third parties, practitioners must consult the guidelines established by these parties for the remediation of disputes.

PAYMENT FOR SERVICES

There are five basic methods of payment (Box 33-1). Practitioners may be required to use many of these methods or relatively few, depending on the services offered and preferences of the practitioner.

Advance Payment

The advance payment method requires that payment be made before services are rendered or materials are obtained. The most common examples are prepaid service agreements for contact lens patients, in which the fee is paid at the start of the covered period of services, and payments for contact lenses are required in full before lenses will be ordered.

Step Payment

The step payment method permits the patient to make serial payments as services or materials are received. An example would be a planned replacement program for contact lenses, in which periodic replacement of lenses is a feature of the program.

BOX 33-1

Methods of Payment for Services

1. Advance payment
2. Step payment
3. Deposit and payment of balance
4. Credit and billing
5. Installment payment

Deposit and Payment of Balance

A traditional method of payment for fees-for-services is the deposit and payment of balance method, which requires the patient to pay a percentage of the amount due after services have been rendered and to pay the balance when ophthalmic materials are received. An example situation would be to require payment of 50% of the cost of services and eyewear after the examination and the remaining 50% at the dispensing of the eyewear.

Credit and Billing

If no payment is required, credit is extended to the patient and billing is used to obtain payment of the amount credited. For example, the patient is billed for the cost of the examination and ophthalmic materials, with no payment required until the bill is received.

Installment Payment

The installment payment method requires payment in stated amounts or over a fixed period. An example would be to allow payment in three fixed installments, paid during a 3-month period.

Of all these methods, only the first and second do not result in the extension of credit to the patient. The third, deposit and balance, has been relied on by optometrists because the deposit can be used to cover the cost of ophthalmic materials, thereby preventing financial loss to the optometrist if the patient should fail to pay the balance. The last two methods are true credit transactions because they do not obligate the patient to make payment until after services and materials have been received. Billing of the patient is necessary to collect the amount due. Where credit and billing are used, it has been determined that approximately 70% of patients will pay on receipt of the first statement, approximately 25% will require extra billings or special arrangements, and the remaining 5% cannot or will not pay. In a well-run practice, the percentage of unpaid accounts should not exceed 3% to 5% of the patients billed.

The billing of patients requires that a statement be prepared and mailed. If a computerized system is used, the amount due can be posted in the patient's file for transfer to a statement at the time of billing. With computerized systems, it is relatively easy for accounts receivable to be monitored.

Unpaid accounts that are 30, 60, 90, and 120 days in arrears are monitored. This not only permits the practitioner to keep track of the accounts that remain unpaid and the period that they have been due but also allows in-office collection efforts to be documented. These efforts must be organized by the practitioner in a manner that is in keeping with the practitioner's philosophy toward collections.

If billing is to be used, collection efforts will become necessary. If bills remain unpaid beyond a reasonable period, the practitioner must decide whether an effort will be made to collect the amount due, and if such an effort is instituted, whether the practitioner will collect the account or allow a third party to serve as the collection agent. This decision is an

important one and must be given due consideration by the practitioner because it will dictate the manner in which the office is organized to initiate collections efforts. It also will have ramifications outside the office because the method chosen by the practitioner for the collection of unpaid accounts can adversely affect the practitioner's reputation if poorly done. It is advisable to discuss methods of collection with other practitioners before instituting a policy and to seek legal counsel as well so that ill-advised policies or efforts will not be incorporated into the procedures of the practice.

LEGAL REGULATION OF CREDIT

Several legal issues are important when credit is extended to patients: first, the decision to deny credit to an individual is regulated by federal law; second, the Truth-in-Lending Act can be imposed on certain credit practices; and third, the collection of unpaid fees by collections agencies and attorneys is subject to both federal and state regulation, which has ramifications for the optometrist employing the agency or attorney.

Equal Credit Opportunity

If an optometrist extends credit to patients, it must be awarded on a nondiscriminatory basis. Credit cannot be refused because of a patient's race, color, religion, national origin, sex, marital status, age, or because the patient receives public assistance. If an optometrist refuses credit to a patient, the proper basis for the denial should be documented. Violation of this federal law is punishable by both civil and criminal penalties.

Truth-in-Lending Act Practitioners who permit credit and subsequently bill patients for amounts due should be careful to structure the billing program so as to avoid the voluminous disclosure and reporting requirements of the Truth-in-Lending Act. This federal law, which is applicable in all jurisdictions, requires creditors to provide certain information when extending credit to individuals, even when the creditor is a health care professional such as an optometrist. To fall under the obligations of the Truthin- Lending Act, an optometrist must merely apply a finance charge to unpaid accounts or structure payment from patients in more than four installments (not including a down payment). To avoid the complications of the Truth-in-Lending Act therefore an optometrist should not use finance charges and should allow patients either to make payments in four or fewer installments or allow payments to be made by the patient on an unstructured basis (i.e., not on a fixed schedule). Penalties for violation of this act are both civil and criminal in nature.

Fair Debt Collections

Federal law regulates the collections practices of collections agencies and attorneys. In-office collections efforts by an optometrist to collect unpaid fees are not subject to federal requirements. All states have enacted statutes that regulate the harassment of debtors, however, and the collections efforts of optometrists would be subject to these laws.

Prohibited acts include false or misleading representations (e.g., using deception to collect a debt), harassment (e.g., repeatedly calling or continuously ringing the telephone of a debtor), and unfair practices (e.g., depositing or threatening to deposit a postdated check before the date on the check).

Because of legal regulations, the awarding of credit and the collection of unpaid fees should be carefully organized and scrupulously managed. The first step in structuring a practice to meet these demands is to prepare a written contract for services.

COLLECTIONS

To prevent misunderstanding between practitioner and patient and to provide a legal basis for the resolution of disputes with patients regarding the payment of fees for services and materials, a printed contract should be used. This form should contain three parts: a section requesting certain patient information; a section devoted to the practitioner's payment policy; and a statement concerning collections efforts.

Patient Information

The patient's name, birth date, address, place of work, and other basic information should be requested, as should vital information concerning the patient's spouse.

Payment Policy

The method of payment chosen by the practitioner (e.g., deposit and balance) should be described, as should the manner in which payment may be tendered by the patient (e.g., cash, check, or credit card).

Collections Policy

If the practitioner has decided to collect unpaid accounts, information should be provided to the patient concerning the method of collection. It also is essential to put the patient on notice that, if an attorney's service is required or if it is necessary to resort to small claims court, the patient will be required to pay the attorney's fees and the costs of court in addition to paying the amount due or ordered by the court. Only if this language is included in the contract with the patient can the practitioner collect the full amount due and have legal and court costs borne by the patient.

The contract must be signed by the patient and retained in the patient's record of care. If legal action becomes necessary, it may be used as evidence of the agreement between the parties. The patient contract should be updated at each annual examination to ensure that the patient information is current and to provide documentation of the agreement.

If a patient does not pay as agreed and collection activity becomes necessary, the usual resort of practitioners is an in-office collections effort that involves the use of letters.

First Letter

We have not heard from you with regard to our recent statement

concerning your account with this office. If the enclosed account is in error, please contact us so that we may make the appropriate adjustment. If it is correct, we would enjoy hearing from you soon.

Second Letter

We are disappointed in the fact that we have not received a response to the letter and statement mailed to you last month.

However, we are aware that unexpected developments can make it difficult to meet financial obligations from time to time.

Please consider how you wish to take care of the enclosed statement of account, and contact this office within the next few days so that we may discuss this matter with you.

Third Letter

In our previous efforts to contact you concerning your overdue account, we have evidently failed to make it clear that this is a matter requiring your immediate attention. Much to our regret, unless we hear from you about the enclosed statement, we will be compelled to take an alternative course of action.

Please contact this office immediately so that we may resolve this matter.

FIGURE 33-1 Sample letters for in-office collections.

Telephone collection efforts should not be attempted because of the vulnerability of such efforts to charges that they constitute harassment under state laws regulating debt collection. A three-letter sequence is the preferable means of encouraging payment, with the first letter serving as a reminder that payment has not been received (Figure 33-1), the second letter requesting that contact be made with the office to arrange payment, and the third letter asserting that alternative action is imminent unless payment or an explanation is forthcoming. These letters generally are sent after the bill has been unpaid for 30, 60, and 90 days, respectively.

If payment is not received despite these in-office efforts, the practitioner must decide whether to pursue the matter further or to dismiss the claim as a bad debt. If the practitioner is on the cash system of accounting, the bad debt cannot be claimed as a tax deduction; if the practitioner is on the accrual system, it can be written off because it already has been claimed as income. If the practitioner decides to pursue the collections effort, there are two alternatives available: collect it in small claims court or turn it over to an attorney or collections agency for further disposition.

Methods of Collection

If an optometrist is in a community that has a small claims court and is willing to invest the time and effort involved to file, process, and collect a legal claim, then small claims court is a viable option. If the optometrist wishes to turn the matter over to a third party, either an attorney or a collections agency should be consulted. The choice is left to the practitioner, based on individual preferences and attitudes. Each option has its own strengths and weaknesses.

Small Claims Court

These courts, which settle disputes involving relatively small claims, do not require an attorney, use relatively informal rules, and are not costly. The procedures of small claims courts vary somewhat from community to community, but the general requirements are as follows. To file a claim, the optometrist must file a complaint, allege a legal cause of action (i.e., breach of contract), and pay a filing fee. The address of the defendant must be known so that the complaint can be served. (If the optometrist's contract specifies that the patient is responsible for the costs of collection, an attorney may be hired to file the claim and collect the debt, with the attorney's fees charged to the patient.) A date and time will be set for the trial, which is held before a judge. At the trial, strict rules of evidence are not followed, but the optometrist will need documentation of the examination, services rendered, and reasonable fees charged. Once this evidence is presented, the defendant may offer a defense. After the presentation of evidence is completed, the judge issues a ruling; if it favors the optometrist, the defendant will be ordered to pay a judgment and court costs. If the defendant pays the judgment, the matter is concluded.

Although the defendant has the right to appeal the judgment to a trial court, the amount of money in question virtually always precludes this alternative. If the defendant does not pay the judgment within a reasonable period, the optometrist can obtain an order from the court, allowing the judgment to be satisfied by the seizure and sale of the defendant's assets (i.e., levy), the taking of money from the defendant's bank account (i.e., attachment), or periodic payment from the defendant's salary (i.e., garnishment).

Occasionally, a defendant will not answer the complaint or appear in court. At the time set for trial the optometrist can ask the judge to award a default judgment. After the passage of a certain period, the judgment will be deemed final, and the optometrist will be able to seek the remedies previously described for the satisfaction of the judgment.

Collections Attorney

An attorney hired to manage the collection of unpaid accounts should be instructed by the optometrist in the methods to be used. For example, an optometrist may not want the attorney to file suit or may not be willing to have the patient's assets sold to satisfy a judgment awarded in small claims court. The practitioner should establish the bounds of the attorney's efforts. If an attorney is to be used, however, it is advisable to require patients to sign a written contract and to include the clause requiring payment of attorney's fees and courts costs if legal action must be instituted against the patient to collect the amount owed. The reason for this language is that a collections attorney will charge the optometrist 33% to 50% of the amount collected for professional services. If the clause

is used, the optometrist may collect the full amount owed and the patient pays for the attorney and other legal costs of collection.

Collections Agency

Before a collections agency is hired to collect overdue fees, the optometrist should evaluate the reputation of the agency and assess the collection efforts that it uses. Collections agencies are subject to federal and state laws that regulate debt collection practices, and aggressive or dubious collection practices could result in undesirable ramifications for the optometrist, ranging from injury to the optometrist's reputation to legal action involving the optometrist. The optometrist should be comfortable with the collection agency's practices because they will represent the optometrist in the community.

A second consideration is payment to the collections agency. The preferred method of payment is based on the debts actually collected; the usual fee is 33% to 50% of the amount collected for the optometrist. The less desirable method is one in which the optometrist is charged for collection efforts, whether successful or not. This situation can become very expensive, with little return, and should be avoided. The optometrist should have a clear understanding of how the agency will charge for its services before entering into a contract for collections.

CONCLUSION

If an optometrist chooses to provide credit to patients, billing and collections are an integral part of the process and must be planned for by the optometrist. The optometrist must determine the following:

- The type of payment plan to use
- How to keep track of the accounts receivable
- How to prepare and use a written contract for patient services
- The philosophy of the office with respect to collections
- In-office billing procedures (including "past due" letters)
- How past due accounts will be collected

In making these decisions, the optometrist should consult with other practitioners, practice management advisors, and legal counsel to ensure that efforts are legal, tasteful, and within the bounds of professional conduct.

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BIBLIOGRAPHY

American Medical Association: *Physicians current procedural terminology*, ed 9 (CPT-9), Chicago, 2009.

American Optometric Association: Handbook for assistants, St. Louis, 1989.

American Optometric Association: *Manual on completion of insurance claim forms*, ed 4, St. Louis, 1994.

American Optometric Association: Managed care resource guide, St. Louis, 1997.

American Optometric Association: *The AOA resource guide for employed/affiliated optometrists*, 2009. Available on-line at www.aoa.org.

American Optometric Association: *Medicare Compliance Manual*, 2009. Available on-line at www.aoa.org.

American Optometric Association: *Codes for optometry*, St. Louis, 2009.

Barresi BJ, Brooks RE: Full-scope optometry meets managed care, Optom Economics 4(6): 10–13, 1994.

Beebe K, H offer D: Give insurers the slip, *Optom Management* 27(3): 43–46, 1992.

Classé JG: *Legal aspects of optometry*, Boston, 1989, Butterworth.

C leinman A: How to guard your margin, *Optom Management* 28(5): 17–20, 1993.

Coleman DL: Watch for these booby traps in managed care contracts, *Optom Economics* 4(7): 14–17, 1994.

Consumer Credit Protection Act, 15 USC §1601 et seq.

Elmstrom G: *Advanced management strategies for optometrists*, Chicago, 1982, Professional Press.

Equal Credit Opportunity Act, 15 USC §1691 et seq.

Everett S: Don't undercharge for medical services, *Rev Optom* 128(12): 25, 1991.

Fair Credit Reporting Act, 15 USC §1681 et seq.

Fair Debt Collection Practices Act, 15 USC §1692 et seq.

Gailmard NB: Cracking the codes: how to use CPT-4 codes to get prompt payment, *Rev Optom* 132(3): 33, 1995.

Hayes J: The fearless way to raise fees, *Optom Management* 26(6): 14–20, 1991.

Hayes J: How to guarantee a higher net, *Optom Management* 28(1): 16, 1993.

Irving F: Are your fees in line?, *Optom Management* 28(10): 22–25, 1993.

Lahr J: A no-nonsense guide to third-party plans, *Optom Management* 26(10): 29–32, 1991.

Lee J: Set your fees for a fair profit, *Optom Management* 28(9): 26–29, 1993.

Lookabaugh R: Double your patient-pleasing power, *Optom Management* 27(3): 16–20, 1992.

Maino DM: Personal finance programs tell you where it all went, *Rev Optom* 130 (11): 25–27, 1993.

Muellerleile J: Fix your prices without price fixing, *Optom Economics* 4(3): 19–22, 1994.

Regulation Z (Truth-in-Lending Act) 12 CFR §226. Shuldiner R: Total recall. *Optom Management* 26(9): 14–22, 1991.

Tlachac CA: Fees for difficult fits, *Optom Economics* 4(6): 24–27, 1994. Truth-in-Lending Act 102(a), 12 CFR §226.

Websites

www.optometric.com. Online version of *Optometric Management* magazine, which offers information on credit and collections methods. www.revoptom.com.

Online version of *p* magazine, which offers surveys and other information on fees. www.revoptom.com.

Online version of *Review of Optometry* magazine, which offers information on credit and collections methods.