

LEGAL

IS THE DEPARTMENT OF HEALTH SPLITTING HAIRS ABOUT SPLITTING FEES?

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In New York, it is considered professional misconduct for physicians to share fees for professional services with an unlicensed person or entity. Subject to certain limited exceptions, the prohibition against fee splitting extends to any arrangement where "the amount received in payment for furnishing space, facilities, equipment or personnel services used by a [physician] constitutes a percentage of, or is otherwise dependent upon, the income or receipts" of the physician. A violation not only subjects the physician to various disciplinary actions, but also makes any such agreement unenforceable.

Although it has long been recognized that, in New York, management company fees may not be based on a percentage of physician revenues, it had previously been assumed, based on opinion letters issued by the Departments of Education and Health, that billing services could be compensated on a percentage of collections basis, as is the industry practice nationwide. Recent developments, however, now question the legality of those arrangements.

In an April 17, 1997 letter, the Department of Health's general counsel responded to a request for the Department's opinion as to whether three potential pay-

ment arrangements between a medical practice and a management company or a billing company constituted fee splitting. The letter reviewed three hypothetical situations: the first two addressed payment arrangements with a management company and the third ad-



dress a payment arrangement with a billing company.

In the third hypothetical, a practice contracts with a billing company to provide billing and collection services. The billing company is paid a fee based on a percentage of the amount collected. The Department of Health said this was illegal fee-splitting and that only the traditional percentage compensation arrangements between physicians and collection agencies attempting to collect past due bills, which would otherwise be uncollectible, were permissible. The Department dis-

tinguished between a collection agency and billing agency arrangement on the basis that the fee paid to a collection agency would have "a remote connection" to the revenues or profits of the practice and would not "create the appearance of an ownership interest in a non-licensure, serve as a basis for a non-licensure to influence the internal workings of the practice, or establish any other ill the statute was intended to prevent."

It is important to keep in mind that the Department of Health letter only reflects the views of its counsel and not a court of law. Nevertheless, on its face, it calls into question the legality of percentage of collections billing arrangements, which are widely used in New York. Although the Department's position on billing services agreements may be legally correct based on the express language of the law, how that position gets applied to existing percentage of collections billing arrangements remains to be seen. ♦