

Waivers: The Basics for the Pediatric Office

Waivers should be considered as a financial policy component for pediatric practices. A waiver is a statement that the responsible party (patient/parent/guardian) signs accepting financial responsibility for a requested medical service which is or may not be covered by health insurance. To assist pediatric practices, the AAP Department of Practice has gathered information on waivers (which may also be referred to as advance beneficiary notices or ABN).

The following information (or questions and answers) have been prepared to inform pediatricians and other health care practitioners of certain basic practice principles. These materials are not a substitute for legal advice and should not be relied on or used without the advice and assistance of your legal counsel. Among other things, the contract with the insurance provider or other third party payer and/or state law may preclude you from using these materials or may have an impact on how these materials may be used in given circumstances. These issues are beyond the scope of this information (or questions and answers).

What is a Waiver?

A waiver is a statement that a patient/parent/guardian signs acknowledging that the requested service is or may not be covered by health insurance and accepting responsibility for payment for the service. The waiver may be accompanied by a request for payment for the service at the time of the service.

When should you use a waiver?

A waiver may be used when the requested service is or may not be covered by health insurance, but only if permitted by the terms of your contract with the third party payer and state law. It should be presented to the patient before any such service is provided. Keep in mind that a waiver may not be sufficient under certain circumstances, such as in an emergency, to shift liability for the charges to the patient/parent/guardian. You should seek the advice of legal counsel before incorporating the use of waivers into your practice.

Can I bill for a non-covered service after the service is provided if I have not obtained a waiver?

As a general practice it is always preferable to obtain a waiver prior to providing the service in question as a patient/parent/guardian may claim that they did not understand that they would be responsible for payment. Some third party payer contracts may require a signed waiver be obtained prior to providing a non-covered service. A general waiver signed by the patient/parent/guardian or a notice of financial responsibility posted in a prominent place in your office may also be considered to cover these situations. It is advisable to check the terms of your contract with the third party payer and state law regarding conditions for using a waiver. A form of general waiver follows this Q & A.

Must the patient be informed before the service is provided that insurance will not cover it or is this more of a courtesy?

From a matter of general contract law, it is always better to clarify the terms of the payment arrangement with the patient in advance. However, it would also be reasonable to advise the patient/parent/guardian that they are responsible for knowing the terms of their insurance coverage and for following the procedures set forth in their plan for obtaining coverage, including those relating to pre-certification. Under the U.S. Department of Labor Claims Procedure Regulations applicable to group health plans, a plan must respond to an urgent pre-certification inquiry within 72 hours after the request is made. A plan must respond to a non-urgent inquiry within 15 days. That being said, it is appropriate for the pediatrician or other health care provider to notify a patient/parent/guardian of any coverage issues that come to the pediatrician/health care provider's attention in the course of providing services.

Can I use a waiver when the insurance company covers only a portion of the charge for a service?

Whether you can use a waiver for services only partially covered by insurance depends on your contract with the third party payer and may also be impacted by state law and/or the circumstances under which the services are being provided. Most contracts do not allow for "balance billing" for services that are covered under the service agreement. In special circumstances, an insurance company may waive this requirement. Consult your attorney for further guidance.

How can I keep providing services with payment below my cost?

You need to review carefully the contracts that you have signed with the insurance carriers and other third party payers before implementing procedures to address this issue. Some pediatricians have elected not to provide below-cost services to ANY of their patients and refer them elsewhere because most provider contracts stipulate that you cannot discriminate based on health plan participation. Therefore, if you provide a particular service in your office, you may need to provide that service to all patients. Laboratory tests may be an exception to this rule, although certain third party payer contracts may require that you use the contracted laboratory. Thus, if a patient/parent/guardian wants a laboratory test done in the office and is willing to pay for it even though their insurance will cover the cost of the test at an outside lab, or if a patient/parent/guardian wants the FlumistTM, but the health plan will only cover injectable flu vaccine, a waiver and consent to be responsible for the non-covered service may be appropriate, unless prohibited by the terms of your contract with the third party payer or state law.

What use of waivers to charge patients directly for services would put me in legal difficulty?

Care must be taken to determine that the use of waivers to charge patients directly for services does not violate the terms of your contract with the third party payer or state law. For example, the use of a waiver to obtain full payment would likely be a breach of that agreement in the event that the provider agreement prohibited balanced billing of the patient. As a general rule, you should not seek to charge Medicaid patients for non-covered services or any shortfall in payment for the services rendered. In addition, you must exercise caution to be certain that the

person signing the waiver, who should be the person responsible for payment, understands the terms of the waiver and that they will incur charges as a result of signing the waiver.

SIDEBAR: Sample Waiver or Advance Beneficiary Notice (ABN). It is essential that you consult your legal counsel before using any waivers in your practice.

Patient's Name: _____

Insurance Co: _____

Advance Beneficiary Notice (ABN)

Note: You will need to make a choice about receiving these health care items or services.

Your health insurance may not pay for the item(s) or service(s) that are described below. Health insurers do not necessarily pay for all of your health care costs. Insurance only pays for covered items and services. The fact that insurance may not pay for a particular service does not mean that you should not receive it, if your doctor recommends that you do receive this service.

Item(s) or Service(s):
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The purpose of this form is to help you make an informed choice about whether or not you want to receive these items or services, knowing that you might have to pay for them yourself. By signing below you agree to take financial responsibility for the cost of the item(s) or service(s), if your health insurance does not include this as a covered item(s) or service(s).

Responsible party signature: _____

Date: _____