

Fee Splitting: What It Means for Illinois Counselors, Social Workers and Psychologist



I know this will be a controversial topic but I think it is important that counselors become aware of the law and risks. I am aware that fee splitting is unfortunately a common practice. Counselors will sometimes enter into contractual arrangements with other counselors. Their agreements frequently provide that payment should be made based on a percentage of collections. A portion of compensation for a professional service (i.e. counseling).

This is illegal.

Definition:

An arrangement where the counselor/doctor/psychologist (fill in the practitioner) accepts a percentage of another independent provider's fees for professional services they have not been provided, "is not ethical or legal in Illinois (and almost everywhere) and constitutes fee splitting. The costs of these services should be established at market value and paid per your agreement or contract.

Why:

The reason it is believed not to be in the interests of clients is because it represents a conflict of interest which may adversely affect patient care and well-being, since patients will not necessarily be referred to the most appropriate practitioner to provide their on-going care but will instead be referred to those doctors/counselor or clinics with whom the referring doctor/counselor has a "fee splitting" or commission payment type of arrangement.

The prohibition against fee splitting arrangements is not only applied to counselors. There is a pervasive view in state and federal legislation and administrative regulations that fee splitting violates the public interest in such areas as the practice of medicine, optometry, and law and mental health services.

What the Courts have said:

In March 2002, the Illinois Attorney General issued an opinion that an insurance contract requiring physicians to provide 5% of revenues to a healthcare management company as a fee violates the Illinois Medical Practice Act of 1987, 225 ILCS 60/22(A)(14), with respect to Illinois licensed physicians.

There have been several Illinois Appellate Court cases that prohibit payments by physicians for management or other services based upon a percentage of professional income. In *E & B Marketing Enterprises, Inc. v. Ryan*, 209 Ill. App. 3d 626 (1991), a marketing firm promoted the name and practice of a physician in return for a consulting fee of 10% on all billings collected in connection with these referrals. This procedure was considered illegal fee splitting under the Illinois Medical Practice Act.

Similarly, an Illinois Appellate Court struck down a practice where optometrists and ophthalmologists entered into an arrangement where the optometrists would refer patients in need of ophthalmology services to the licensed physicians. *Practice Management, LTD v. Schwartz*, 256 Ill App 3d 949 (1993), appeal denied, 155 Ill 2d 575(1994) The court found that a danger of fee splitting arrangements is that they may motivate recommendations based on self-interest, rather than the competence of the professional.

In 1999, an Illinois Appellate Court found that a physician may argue that a contract was an invalid fee splitting arrangement under the Illinois Medical Practice Act, even when the physician was at fault in negotiating and entering into the contract. *TLC Laser Ctr., Inc. v. Midwest Eye Institute, Ltd*, 306 Ill. App. 3d 411 (1 Dist. 1999).

Although counselors do not receive Medicare or Medicaid funds fee splitting is addressed in federal regulations.

For a provider receiving federal dollars, the Medicare and Medicaid fraud and abuse statute provides a serious and sobering prohibition against fee splitting. Title 42 U.S.C. Section 1320a-7b states:

Criminal penalties for acts involving Federal health care programs.

(b) Illegal remunerations.

(1) Whoever knowingly and willfully solicits or receives any remuneration...directly or indirectly, overtly or covertly, in cash or in kind -

(A) in return for referring an individual to any 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... shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years or both.

(2) Whoever knowingly and willfully offers or pays any remuneration...directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person -

(A) to refer 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... shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years or both.

Illinois Supreme Court Ruling

In 2008 the Illinois Supreme Court established fairly clear rules as to what constitutes illegal fee splitting. The Supreme Court has substantially broadened that concept in the recently decided case of Vine Street Clinic v Healthlink, Inc. In that case, the Court ruled that it is illegal for physicians to share a percentage of their medical professional fees with anyone other than physicians with whom they practice (either in the same practice group or on a division of responsibility basis). This prohibition applies not only to payments to other physicians for a referral but also to percentage payments to anyone for any purpose, including payments for management and other services to the practice. "Non-physicians can receive a fee for -services rendered apart from a referral, but cannot receive a percentage of the physician's profit, or its equivalent." The ruling affects not only strict percentage arrangements but also any arrangement based directly or indirectly upon the amount of fees earned.

Illinois Licensure Laws

Counselors

Counselor Licensure Act (225 ILCS 107/80)

Sec. 80. Grounds for discipline.

(12) Directly or indirectly giving to or receiving from any person, firm, corporation, partnership or association any fee, commission, rebate or other form of compensation for any professional service not actually rendered.

In plain language: giving or receiving a fee
for counseling services provided by someone else

An exchange that provides a portion of counseling fees collected to pay for the rent or office support services. **ILLEGAL**

An agreement that one counselor will receive remuneration from another counselor based upon client fees they collect.
ILLEGAL

Social Workers

Social Worker Licensure Act (225 ILCS 20/19) (from Ch. 111, par. 6369)

Sec. 19. Grounds for disciplinary action.

(1) Directly or indirectly giving to or receiving from and person, firm, corporation, partnership or association any fee, commission, rebate or other form of compensation for any professional service not actually rendered.

Social Worker Rules

Section 1470.96 Unethical, Unauthorized and Unprofessional Conduct

a)

6. Directly or indirectly giving to or receiving from any person, firm or corporation any fee, commission, rebate or other form of compensation for any professional services not actually rendered. Social workers shall not participate in illegal fee-splitting arrangements, nor shall they give or accept kickbacks for referrals. However, it is not unethical for social workers to utilize referral services for which a fee is charged, nor to participate in contractual arrangements under which they agree to discount fees;

Psychologists

Law

(225 ILCS 15/15) (from Ch. 111, par. 5365)

Sec. 15. Disciplinary action; grounds.

..... any one or a combination of the following reasons:

(12) Directly or indirectly giving to or receiving from any person, firm or corporation any fee, commission, rebate or other form of compensation for any professional services not actually rendered.

Rules

Section 1400.80 Unethical, Unauthorized, or Unprofessional Conduct

f.) Directly or indirectly giving to or receiving from any person, firm or corporation any fee, commission, rebate or other form of compensation for any professional services not actually rendered;

Marriage and Family Therapists

(225 ILCS 55/85) (from Ch. 111, par. 8351-85)

(Section scheduled to be repealed on January 1, 2018)

Sec. 85. Refusal, revocation, or suspension. The Department may revoke a license for

12.) Directly or indirectly giving to or receiving from any person, firm or corporation any fee, commission, rebate or other form of compensation for any professional services not actually rendered;

Conclusion

Fee splitting arrangements for Illinois Counselors / Social Workers / Psychologists are illegal. I know some will read the law and decide that it does not apply to them for whatever reason. I frequently hear from counselors who after looking at licensure rules and laws then decide it doesn't apply to what they are doing mainly because they don't want it to apply to them.

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Recommendations:

Healthcare professionals should renegotiate all contracts capable of interpretation as fee splitting arrangements. I do not recommend attempts to circumvent the law. Establish a flat fee consulting agreement with a one year evaluation to determine whether the arrangement should be changed in any way. In this manner, the dollars received by the person who actually provides services are not based on a percentage of referrals, collections, etc. The provider should immediately check with his or her legal counsel.