

Refund Request

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Prompt Payment Laws

- The statutory terms are binding and override contract terms:
- “Provisions of this section may not be waived, voided or nullified by contract.”
- Does your contract state that you will refund erroneous payments? Contested payments?

Prompt Payment - Refunds

-HMO may not retroactively deny a claim because of subscriber ineligibility more than ONE year after the date of payment of the claim.

- Refund requests may go back 30 months from date of payment for reasons other than eligibility (12 months for Physicians).
- The health maintenance organization may not reduce payment to the provider for other services unless the provider agrees to the reduction in writing or fails to respond to the health maintenance organization's overpayment claim as required by this paragraph.

Prompt Payment - Refunds

- A provider must pay, deny or contest a claim for overpayment within 40 days after receipt of the claim.
- A provider must contest or deny the claim, in writing, within 35 days and provide specific reasons for contesting or denying the claim – as well as identify additional information for contested claims. The payor has 35 days to provide the requested information. Once the provider receives the additional information, they have 45 days to pay or deny.
- Provider has 120 days to pay or deny contested claims, and failure to pay or deny within 140 days creates an uncontestable obligation to pay.

Prompt Payment – Refunds

- What do you do if the Insurer does a set off after you have timely denied the request for a refund.....
- **SUE THEM!!**

HMO Case Law

- Foundation Health v Westside EKG, 944 So.2d 188 (Fla. 2006) – Supreme Court of Florida held that a provider can bring a cause of action against HMO for failure to comply with the prompt payment provisions of the HMO act.

Refund Law

- Common law “Innocent Third Party Creditor Exception” = At the time of rendering services the Hospital became a third party creditor and received the insurance payment in good faith, and thus no refund is required.
- Equity dictates that the party that created the situation occasioning the loss be the party that sustains the loss.

Refund Laws

- Federated Mutual Ins v. Good Samaritan Hospital, 214 N.W.2d 493 (Neb. 1974) – Hospital insurer, which overpaid hospital, could not recover from hospital the difference between the policy coverage and patient's bill where overpayment was due solely to insurer's mistake and lack of care, hospital made no misrepresentation to induce payment, and hospital acted in good faith in receiving overpayment.

Refund Laws

- City of Hope Nat'l Medical Ctr. v. Superior Court, 8 Cal.App.4th 663 (July 1992) – Health insurer could not recover payment made to Hospital by insurer under mistaken belief that insured's treatment was covered under the health policy where hospital made no misrepresentations to insurer and had no notice of insurer's mistake at time payment was made; burden for determining limits of policy liability must be placed upon insurer, as the only party in position to know policy provisions and its liability under the contract of insurance.

ERISA Refunds

- ERISA does not have timelines within which refunds may be requested.
- Use State laws – If prompt payments laws are not preempted then refund laws may not be preempted.

Preemption – Federal vs. State Law

- Typically, ERISA preempts state laws.
- However, there is no preemption if the state law:
 - Seeks to regulate insurance
 - Does not conflict with an ERISA law
 - Does not give a claimant more benefits than the ERISA law provides
- 29 CFR 2560.503-1(K)(1) – Nothing in this section shall be construed to supersede any State law that regulates insurance, except to the extent that such law prevents the application of this section (claim procedure).

ERISA Refunds

- National Benefits Administrators v. Mississippi Methodist Hospital, 748 F.Supp. 459 (S.D. Miss. 1990) – Plan administrator could not maintain ERISA action against provider to recover payments made in error. Congress did not authorize courts to develop or allow causes of action or remedies not expressly provided for by Act.
- The insurer, possessing the policy and the knowledge of its terms, made the mistake and, as between it and the hospital, it must bear the loss.