

Overpayment Notices

Repaying and Avoiding Insurers' Claims

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by Angela Foehl

Few events strike terror in a provider's heart like an overpayment notice from a health care insurer. The insurer says it paid too much on your claims and now wants the money back. To avoid this problem, providers must prevent or detect overpayments, know their rights and obligations, and be practical in obtaining resolutions.

Economic downswings can pressure health care insurers, including Medicare and Medicaid, to audit providers' claims with more scrutiny. Miscoding, data-processing errors, and accounting problems heighten the risk of overpayments.

Providers should ensure that billing methods comply with insurers' rules, especially coding with Current Procedural Terminology (CPT) and *International Classification of Diseases, 9th Revision, Clinical Modification* (ICD-9-CM) codes. Code services and diagnoses accurately. Use good medical practice management and accounting software.

Some providers believe incorrectly that if a claim is paid, the insurer agrees with it. However, insurers may pay simply because software did not catch an impropriety in the claim. This situation may continue until the insurer flags an overpayment and demands repayment.

Overpayments can be large. One ASHA member reported a notice for \$75,000. Your provider agreement likely addresses overpayments and payback requirements. Providers are responsible for detecting overpayments.

If you are overpaid, even on one claim, follow your contract. Report it to the insurer in writing and repay it immediately, if possible. If necessary, negotiate an installment repayment plan you can manage.

A certified public accountant (CPA) can set up your books and keep them on track, allowing you to flag payment discrepancies early. If you start a private practice, have a CPA set up the books with reliable, flexible business accounting software. Have a CPA audit your accounts periodically. Solid accounting will match reimbursements with claims to flag payment inconsistencies quickly.

What Should I Do?

You need to understand fully how the insurer views the overpayment, in order to dispute it. The overpayment notice and supporting documents should explain overpayment factors, such as total amount, billing time frame, cause (problem with codes, fees, services, etc.), repayment period, and deadlines. The insurer should also explain your due process rights to respond to the notice; submit evidence; have representation; a hearing; and an appeal. Forms, directions, and procedures typically are on the insurer's Web site or in your provider contract and manual.

Compare the insurer's facts and analysis with your own to determine whether you agree with the insurer on any points. You may need to audit claims involved in the overpayment.

Consult with an attorney, especially in situations that involve large sums and/or if the insurer intimates that the overpayment is related to your error, legal non-compliance, misconduct, or fraud. In most administrative actions, such as overpayment proceedings, you are allowed to have an attorney or other representative with you to represent your interests. Certain types of non-compliance or misconduct can result in removal from government programs, (Medicare or Medicaid) and other sanctions, even criminal charges.

Private insurers, Medicare, and Medicaid offer different ways to dispute and repay overpayments. To dispute the determination, carefully articulate your points of agreement and disagreement in writing. The provider's process for Medicare appeals is available from the [Centers for Medicare and Medicaid Services \(CMS\)](#) Web site. CMS recently changed its Medicare appeals procedures for claims by both providers and beneficiaries. CMS extended effectiveness of the interim final rule on Medicare Claims Appeal Procedures (CMS-4064-IFC) and delayed the final rule's publication date to March 1, 2009.

The CMS rule (CMS-6032-P) to obtain approval for a Medicare repayment plan (including a hardship determination for an extended repayment plan) is under revision; a final rule is anticipated in 2009. The regulation in effect is 42 C.F.R. Sections 401.601–607. State Medicaid agencies issue providers' manuals and information, posted on their Web sites. You may also be able to negotiate a repayment plan or settlement with a private insurer. Know your rights, obligations, and action deadlines. Procedures and deadlines may come with your overpayment notice.

Put action deadlines on your calendar to contest or pay the overpayment, submit documents, request a hearing, and complete other tasks. Submit a written request for a personal hearing, which is often more convincing than written communication. Request the insurer's permission to bring your attorney or other representative. Prepare for the hearing, know your case, and keep accurate, detailed notes during the proceedings. Keep detailed records of all communications with the insurer such as time, date, contact name, and points discussed. Send all letters and documents via certified mail with a signature requested.

Most states have a form of independent, third-party review for private plans' decisions. These reviews do not apply to self-funded private plans (those exempt from state law because they are regulated by the federal government under the Employee Retirement and Income Security Act—ERISA) or to Medicare and Medicaid. If you are in a jurisdiction with an independent third-party review organization (IRO) that reviews insurers' determinations, you

may need to complete the entire appellate process with the insurer prior to requesting an IRO review.

Mediation and Arbitration

Your provider contract may require mediation or arbitration. Either dispute resolution process can be mandatory or discretionary, depending upon the contract. In mediation, a third-party mediator facilitates settling the dispute. The mediator "go-between" communicates each party's position and settlement offer to the other, to find a mutually agreeable resolution. The parties can agree to a solution put into a written settlement agreement. Most mediation is not binding; either party can quit any time before signing a settlement agreement. Typically, parties that settle agree not to sue in court over the same issue.

Arbitration is different. It can be binding or non-binding. Provider contracts may have a mandatory, binding arbitration clause that precludes the provider from suing the insurer. A third-party arbitrator hears the parties, reviews their documents, and then resolves the dispute with a decision. In binding arbitration, both parties accept the arbitrator's determination as final.

Limits

Is the insurer legally entitled to collect any portion of the claimed overpayment? Some states have a "look-back" provision to limit how far back a private insurer can go to recoup overpaid claims. An example is New York State's limit of two years after a physician received the original payment. Contract or state law can impose a limit but private insurer-provider contracts, such as in New York, may not be able to override that limit. There are "look-back" exceptions for provider fraud, intentional misconduct, or abusive billing; self-insured plans; and government programs.

Look for terms stating how the overpayment is to be repaid. For example, an insurer may be able to demand a refund or deduct the overpayment from money payable in future to the provider on other claims.

Unless you are absolutely sure that you do not owe the asserted overpayment and can prove it, think creatively about how to have enough money accessible for a timely payment of the total or first installment. Find out your timeline, penalties, and tax ramifications to access certificates of deposit (CDs), retirement funds, investments, loans, or other sources of funds. Make a detailed timeline to do important tasks. Professional advisers such as accountants and attorneys can help you contest an overpayment notice, negotiate with an insurer and prepare for repayment, if necessary.



Angela Foehl, director of private health plans advocacy, can be contacted at afoehl@asha.org or 800-498-2071, ext. 5677.

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