



INSURANCE

When Insurers Try to Get *Your* Money Back

RECOUPING PAID CLAIMS: WHAT THE LAW SAYS (INCLUDING A KEY EXCEPTION).

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Question: Can an insurer recoup payments from previously paid claims? I have heard a lot of conflicting information; and also wonder about any statute of limitations.

This is a common question I'm asked by H.J. Ross Network members and seminar attendees. There are several scenarios in which you could dispute and not have to repay payments that insurance later deems incorrect.

Here Are the Facts

City of Hope Medical Center, a hospital in Los Angeles, Calif., provided medical care for Dominic Constanti. Mr. Constanti was insured by Western Life Insurance Company. The hospital obtained a standard assignment of benefits from the patient and submitted claims, which were paid by the carrier. Western later determined that the treatment was "experimental" and requested the money back.

In a tersely worded decision, the California Court of Appeals said, "Stated plainly, if it's your mistake, you get to pay for it - unless the recipient misled you or accepted the payment knowing you didn't owe it."



The California court also surveyed three other cases around the country, all of which arrived at the same conclusion. In a Nebraska case, the carrier contended that it mistakenly paid claims beyond the policy limits. The court held that the insurance company could not recover the money.

"If we subjected a hospital to possible refund liability and the insurer later discovers a mistaken overpayment, lasting until the statute of limitations expires on all paid claims, we place an undue burden on hospitals. Further, the insurance company is in the best position to know what the policy limits are and must bear the responsibility for their own mistake."

In Texas, Lincoln National Life Insurance mistakenly paid claims after its policy had expired. The court denied recovery, stating, "Here the insurer knew its policy payment provisions, but failed to notify the health care provider as to these provisions; and the insurer alone made the mistake of paying beyond its responsibility. The health care provider made no misrepresentations, had no knowledge or notice of the insurer's mistake, extended valuable services based on the assignment of payment by the insured, was not unjustly enriched, and simply had no reason to suspect that any of the payments for services rendered were in error. In the normal course of such business, the hospital has no responsibility to determine if an insurance carrier is properly tending to its business."

A similar case was decided in 1990 in Mississippi, reaching the same conclusion.

The Law Is on Your Side - Use It!

We are faced with this scenario all too often. Although not mentioned in any of these cases, the doctor's staff has usually called or written to the carrier to verify coverage in advance. The refund request arrives well after the patient has been treated and released.

I've included citations to all four cases at the end of this article. Use them as your shield the next time a carrier says: "*We're sorry, but we made a mistake ... please return the money!*"

An Important Exception

The application of this case law does not always hold up if you are a contracted provider, as PPO contract language often allows recoupment, regardless that the error was by the carrier. In some cases, they may simply recoup from a future payment from the same carrier. (*If you are "out of network," you would use the case law as your shield.*)

Statutes of Limitations

However, even when you are contracted, there is also a statute of limitations for recoupment. This is similar to the statute or rules of timely filing. Note that on federal claims, you have one year to send a claim from the date of service; and the carrier has a one-year time limit for recoupment. Regardless of the contract, a carrier cannot force a repayment if beyond the time allowed for recoupment in your state.

Each state's rules will vary; there is no national standard. Here are the statutes of limitations for select states:

- Ariz., Calif, Fla., Mo., Va., Wash., W.V.: one year
- Utah: 36 months
- Conn.: five years
- Iowa, Ind., N.C., N.Y.: two years
- Dist. of Col., Mass., Md., Maine, N.H., N.J., Tenn.: 18 months
- Ga.: 90 days
- S.C., Texas: 180 days
- Ill.: 18 months
- Iowa: two years
- Alaska, Del., Hawaii, Idaho, Mich., Nev., Pa., Ore., R.I., Vt., Wisc.: none

Key Points to Remember

An insurance company may not recoup payment from the provider unless the provider engaged in fraud or misrepresentations regarding the services provided; or unless it is otherwise clear that the provider is not entitled to be paid on the claim.

As insurance companies rely increasingly on tactics such as recoupment, providers should be aware of their right to challenge this way of doing business as unfair and deceptive, no matter how little or how great the deduction is being made.

Address the recoupment request as soon as possible. You have the right to challenge a request, but there may be defined time constraints for doing so in your contract with the health insurer. In some cases, the insurer will automatically recoup the payment if it doesn't receive an appeal within a specified period of time.

Legal Cases Referenced

- *City of Hope National Center v Western Life Insurance Company*. Court of Appeal, Second District, Division 1, California; decided July 31, 1992.
- *Federated Mutual Insurance Company v Good Samaritan Hospital*. Supreme Court of Nebraska; decided Jan. 31, 1974.
- *Lincoln Nat. Life Ins. v Brown Schools*. Texas Court of Appeals; decided July 14, 1988.
- *National Ben. Administrators v MMHRC*. U.S. District Court for the Southern District of Mississippi; decided July 26, 1990.

Editor's Note: Have a billing question? Submit it via email to Sam at sam@hjrossnetwork.com. Your question may be the subject of a future column. Note that submission of a question is acknowledgment that it may be referenced (anonymously) in his column.

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