NELSON HARDIMAN
HEALTHCARE LAWYERS

Keeping Up With Insurance Reimbursement Tactics: “Recoupment”

For most healthcare providers, adapting and responding to evolving payor practices in insurance reimbursement is mission critical. New challenges for providers are constantly arising from third-party payors, including government programs, fully insured commercial health plans, and self-funded employer plans. From time to time, Nelson Hardiman provides updates regarding developments around reimbursement that may be of interest to providers (for information purposes only, not legal advice or solicitation).

Recoupment is the practice of an insurance company to offset past payments made to a particular provider that an insurance company has unilaterally determined were made in error with future sums owed to that same provider. While the practice is not new, our experience has been a rising level of questions from providers over the past year relating to their rights in the face of the expanded use of recoupment.

Generally, an insurance company may not recoup that 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. California case law has established that payors may not unilaterally initiate a recoupment, even upon discovering that they made a mistake in calculating and making a payment.

Although most providers are aware of their right to challenge and refuse to return payments to insurance companies or payors, they may not know that insurance companies are increasingly simply declaring an “overpayment” with respect to a specific patient’s claim and then deducting the overpaid amount from a future claim for a different patient. Payors simply ignore that the funds relate to different claims, relying on the sole connecting feature – that the provider is the same.

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 being made. While the specific response may vary from case to case, providers should consider the cost of doing nothing in response to violations of California law.

If you or anyone you know has experienced this issue (even if the harm has been minimal), please contact Jonathan Stieglitz (jstieglitz@nelsonhardiman.com) or Katherine Bowles (kbowles@nelsonhardiman.com) for additional information regarding provider rights and possible remedies.

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