

PEACE OF MIND

EXPERTISE

CHOICE

THE MEDPRO GROUP DIFFERENCE

Guideline

Refunds & Waivers



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Introduction

Healthcare providers strive to provide their patients with high-quality, effective care. However, some patients inevitably will not be satisfied with their results, regardless of whether appropriate care was provided. These patients, or their caregivers, might request refunds of the professional fees they paid or waivers of outstanding fees.

In some cases, a healthcare provider may wish to comply with the request. However, the provider might worry that a refund or waiver could be misconstrued as an admission of negligence. Moreover, forgiveness of debt might trigger reporting requirements under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA Section 111).¹

Because every situation is different, one set of standards relative to refunds and waivers does not exist. MedPro Group does not have a formal position regarding refunds and waivers, but generally does not advocate refunding or waiving professional fees that have been earned. However, if a provider wishes to offer a refund or waiver, they should contact a MedPro senior risk solutions consultant or personal attorney with any questions or concerns.

Objectives

The objectives of this guideline are to:

- Describe the various options that healthcare providers have when confronted with a request for a refund or waiver of professional fees
- Provide guidance on steps to take when offering a partial or full refund or waiver of professional fees
- Review federal statutes and regulations that have potential implications for refunds and waivers
- Discuss the concept of a release from liability as part of the refund or waiver transaction
- Cover other important factors that providers should consider when contemplating refunding or waiving fees

Refund or Waiver Requests

When confronted with a request for a refund or waiver, healthcare providers have several options: deny the request for a refund or waiver, refund or waive a portion of the fees, or refund or waive all of the fees.

Denying a Request for a Refund or Waiver

If the provider plans to deny a request for a refund or waiver, replying to the request with a short letter usually is best. The provider should send the letter via standard and certified mail with return receipt requested. See Appendix A for a sample letter denying a refund or waiver request.

Offering a Partial or Full Refund

Another option is to refund or waive some or all of the professional fees associated with the patient's care. Providers can offer refunds or waivers without the appearance of an admission of any wrongdoing (e.g., if the refund or waiver is offered as a goodwill gesture or for the purposes of patient satisfaction). When a partial or full refund or waiver is offered, the provider should take care to avoid any verbal or written acknowledgment of professional liability.

“Providers can offer refunds or waivers without the appearance of an admission of any wrongdoing. . . . When a partial or full refund or waiver is offered, the provider should take care to avoid any verbal or written acknowledgment of professional liability.”

If a provider decides that a partial or full refund of fees is appropriate, they should first

determine who originally made the payment. If a third-party payer (e.g., an insurance company) paid any portion of the fees, the provider should notify both the patient and the third party that those fees will be refunded directly to the payer. The provider should refund copayments or deductibles paid by, or on behalf of, the patient to the patient or caregiver. See Appendix B for a sample letter that providers can use for a refund or waiver transaction.

Finally, documentation of the transaction is necessary. The provider should note the offer of a refund or waiver, and the acceptance of the offer, in the patient's health record. Below is a sample of a suitable note:

“After several conversations and attempts at remediation, we have not been able to fully satisfy <patient name> with the results of <their> treatment. A refund/waiver of

professional fees in the amount of \$<dollar amount> has been offered/provided as a patient accommodation.”

Note: Special considerations relative to refunds and waivers apply to Medicare patients. Specifically, the Office of Inspector General for the U.S. Department of Health and Human Services finds that routine waivers of copayments or providing “professional courtesy” discounts other than for financial hardship may violate the federal Anti-Kickback Statute, the Federal False Claims Act, and other federal and state insurance fraud laws.²

When considering refunds or waivers for Medicare patients, healthcare providers should consult with their MedPro senior risk solutions consultant and/or their attorneys.

National Practitioner Data Bank Reporting Considerations

Providers also should be mindful of federal requirements concerning National Practitioner Data Bank (NPDB) reporting. An entity that makes a payment (in whole or in part) on behalf of a healthcare practitioner as a settlement or in satisfaction of a written claim or judgment for medical malpractice against that practitioner must report the payment information to the NPDB. This requirement includes refunds of professional fees if they result from a written complaint or written claim demanding monetary payment for damages (including pre-litigation written communications), and they must be based on a healthcare practitioner’s provision of, or failure to provide, healthcare services.³

A waiver of a debt is not considered a payment and is not reportable to the NPDB. For example, if a patient has an adverse reaction to a medication and accepts a waiver of fee as settlement, then that waiver does not need to be reported to the NPDB.

Additionally, individual providers are not required to report to the NPDB payments made on their own behalf. That is, a practitioner or other individual that makes a medical malpractice payment from personal funds is not required to report the payment. However, a professional corporation or other entity composed of a sole practitioner that makes a payment for the benefit of the named practitioner must report that payment to the NPDB.⁴

Release From Liability

When offering a refund or waiver of professional fees, healthcare providers may wish to seek a release from liability from the patient or caregiver, so as to discourage any sort of future legal action related to the care in question.

Whether to seek a release from liability is typically a decision made on the basis of the exact circumstances of each case. If a release form is used, it must be carefully worded to avoid an inadvertent admission of negligence or to further inflame an already upset patient or caregiver.

“Whether to seek a release from liability is typically a decision made on the basis of the exact circumstances of each case.”

A MedPro senior risk solutions consultant can help MedPro policyholders determine whether requesting a release from liability might be appropriate.

Refunds That Exceed the Amount of Professional Fees

If a healthcare provider wishes to offer a refund in any amount that exceeds the professional fees already paid, the situation must be handled differently than described previously.

In this scenario, the provider should contact their professional liability claims specialist, who will be able to provide advice about whether a payment can be made without violating any provisions of the provider's insurance policy or the NPDB reporting requirements.

Additional Considerations

Healthcare providers should consider three additional points related to refunds and waivers. First, if the patient or caregiver is so dissatisfied that the provider is considering a refund, then they might be uncertain as to whether to continue treating the patient. These decisions are best made on a case-by-case basis; however, it is prudent to consider whether [ending the professional relationship](#) is appropriate.

Second, as noted earlier, forgiveness of debt or a refund may trigger duties to report electronically to the Centers for Medicare & Medicaid Services (CMS) if the patient is Medicare eligible. Under MMSEA Section 111, a medical professional making any payment exceeding the \$750 threshold to satisfy a claim may meet the definition of a self-insurer, thus becoming subject to federal reporting requirements.⁵

A reportable payment can be anything of value given to a patient or caregiver, including a refund of previously paid medical bills, forgiveness of outstanding medical bills, free services, gift cards, or any sum of money. Accordingly, healthcare providers should exercise caution when making any refund or payment to or on behalf of a patient. Failure to report a required transaction may result in a penalty of \$1,000 per violation per day.

For more information, see CMS' [Mandatory Insurer Reporting for Non-Group Health Plans \(NGHP\)](#) webpage. Given the complexity of the issue, MedPro recommends that providers consult with their personal attorneys if they have additional questions.

Third, in refund or waiver situations, the tendency might be to view the patient or caregiver as a malcontent who simply needs to be mollified so that the provider and staff members can get back to business. Thinking of the situation this way may deprive the provider

“The goal should be to identify any office policy or practice that staff could improve, so that future instances of dissatisfaction can be avoided.”

of the opportunity to review an instance of care that was unsatisfactory — at least in the eyes of the patient or caregiver. It is good practice to review such patient encounters and identify opportunities to improve office policies and procedures to help reduce future dissatisfaction.

Conclusion

Under the right circumstances, a refund or waiver of professional fees can help diffuse patient dissatisfaction and bring final resolution to a disputed matter. However, healthcare providers should carefully consider the details of each case and ensure that any transactions do not violate state or federal laws or requirements. Careful management of each situation can help facilitate an outcome that is satisfactory to all parties involved.

Resources

- [Centers for Medicare & Medicaid Services: Mandatory Insurer Reporting for Non-Group Health Plans \(NGHP\)](#)
- [National Practitioner Data Bank: Reporting Medical Malpractice Payments](#)
- [Social Security Administration: Civil Monetary Penalties](#)

Endnotes

¹ Public Law 110–173, Approved December 29, 2007. Retrieved from www.gpo.gov/fdsys/pkg/PLAW-110publ173/content-detail.html

² 42 U.S.C. § 1320a–7a; Social Security Act, § 1128A(a)(5). Civil monetary penalties.

³ Health Resources and Services Administration. (2018). *NPDB guidebook*. Rockville, Maryland: U.S. Department of Health and Human Services.

⁴ Ibid.

⁵ Centers for Medicare & Medicaid Services. (2020, February 11 [last modified]). Mandatory insurer reporting for non-group health plans (NGHP). Retrieved from www.cms.gov/medicare/coordination-benefits-recovery/mandatory-insurer-reporting; Centers for Medicare & Medicaid Services. (2016, December 12). Medicare secondary payer mandatory reporting provisions in Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (see 42 U.S.C. 1395y(b)(7)&(b)(8)): Change in reporting thresholds for certain liability insurance, no-fault insurance, and workers' compensation settlements, judgments, awards or other payment. Retrieved from www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Mandatory-Insurer-Reporting-For-Non-Group-Health-Plans/Downloads/New-Downloads/Technical-Alert-Change-in-TPOC-Reporting-Threshold-Change.pdf

Appendix A: Sample Letter Denying a Request for a Refund or Waiver

<Practice/Organization Name>

<Address 1>

<Address 2>

<City, State ZIP>

<Date>

<Patient Name>

<Address 1>

<Address 2>

<City, State ZIP>

Dear <Patient Name>:

I have received your request for a <refund/waiver> of the fees you paid for your treatment on <date>. We are sorry you are dissatisfied with your care. However, I have reviewed your patient record, and your treatment was appropriate. For this reason, I cannot offer a <refund/waiver>.

Please feel free to contact my office at <phone number> if you have any questions.

Sincerely,

[Name]

[Title]

Appendix B: Sample Letter Offering to Refund or Waive Fees

<Practice/Organization Name>

<Address 1>

<Address 2>

<City, State ZIP>

<Date>

<Patient Name>

<Address 1>

<Address 2>

<City, State ZIP>

Dear <Patient Name>:

I have received your request for a <insert the word "partial" if appropriate> <refund/waiver> of the fees you paid for your treatment on <date>. As we discussed before treatment, <side effect/condition> is a known risk of <treatment name>.

It is unfortunate that this occurred, but I have reviewed your patient record, and all care you received was appropriate. However, in consideration of your concern and as a good-will gesture, I will honor your request for a <partial> refund of these fees. Enclosed please find a check for \$<dollar amount>, which is the amount we discussed.

—OR—

For this reason, in consideration of your concern, I will honor your request for a <partial> waiver of these fees. I will deduct \$<dollar amount> from your current balance.

I am pleased that we could agree on this matter. Please feel free to contact my office at <phone number> if you have any questions.

Sincerely,

[Name]

[Title]

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