

# **REFUNDS AND WAIVERS**

## **MedPro Group Patient Safety & Risk Solutions**

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The Medical Protective Company and Princeton Insurance Company patient safety and risk consultants provide risk management services on behalf of MedPro Group members, including The Medical Protective Company, Princeton Insurance Company, and MedPro RRG Risk Retention Group.



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## INTRODUCTION

Physicians and dentists 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, the 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).<sup>1</sup>

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, he or she should contact a MedPro Group patient safety and risk consultant or personal attorney with any questions or concerns.

This guideline will cover various factors that healthcare providers should consider when contemplating refunding or waiving professional fees for patient care.

## 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 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; and
- Cover other important factors that providers should consider when thinking about refunding or waiving fees.

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

## REFUND OR WAIVER REQUESTS

When confronted with a request for a refund or waiver, healthcare providers have several options: (1) deny the request for a refund or waiver, (2) refund or waive a portion of the fees, or (3) refund or waive the total fees.

### Denying a Request for a Refund or Waiver

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

### 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. In doing so, avoiding any verbal or written acknowledgement of professional liability is important.

If a provider decides that a partial or full refund of fees is appropriate, he or she should first determine who originally made the payment. If a third party, such as an insurance company, paid any portion of the fees, the provider should notify that party of the intention to provide a refund.

The third party may request that the provider refund the fees they paid directly to them (rather than to the patient or caregiver). This request should be honored, with the understanding that copays or deductibles paid by, or on behalf of, the patient will be refunded to the patient or caregiver.

Next, the provider should notify the patient or caregiver in writing of his or her intent to partially or fully refund or waive the professional fees. See Appendix B for a sample letter that can be used in a refund or waiver transaction.

Finally, documentation of the transaction is necessary. The offer of a refund or waiver, and the acceptance of the offer, should be noted in the patient's 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 <his/her> 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 (OIG) for the U.S. Department of Health and Human Services (HHS) 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.<sup>2</sup>

When considering refunds or waivers for Medicare patients, healthcare providers should consult with their MedPro Group patient safety and risk consultants and/or their attorneys.

### **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.

A MedPro Group patient safety and risk consultant can help MedPro Group policyholders determine whether requesting a release from liability might be appropriate. If a release is pursued, the consultant can supply the provider with a release form that is appropriate for his or her state.

### **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 his or her 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 reporting requirements of the National Practitioner Data Bank.

### **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, he or she 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 certainly 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

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<sup>2</sup> 42 U.S.C. § 1320a-7a; Social Security Act, § 1128A(a)(5). Civil monetary penalties.

payment over the \$1,000 threshold to satisfy a claim may meet the definition of a self-insurer, thus becoming subject to federal reporting requirements.<sup>3</sup>

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.

Information regarding CMS and reporting requirements can be found at <http://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Mandatory-Insurer-Reporting-For-Non-Group-Health-Plans/Overview.html>. Given the complexity of the issue, MedPro Group recommends that providers consult with their personal attorneys if they have additional questions.

Finally, 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 can get back to the business at hand. Thinking of the situation this way may deprive the provider 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. The goal should be to identify any office policy or practice that staff could improve, so that future instances of dissatisfaction can be avoided.

## CONCLUSION

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

## RESOURCES

- Centers for Medicare & Medicaid Services: Mandatory Insurer Reporting for Non-Group Health Plans — <http://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Mandatory-Insurer-Reporting-For-Non-Group-Health-Plans/Overview.html>
- Social Security Administration: Civil Monetary Penalties — [http://www.ssa.gov/OP\\_Home/ssact/title11/1128A.htm](http://www.ssa.gov/OP_Home/ssact/title11/1128A.htm)

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<sup>3</sup> Centers for Medicare & Medicaid Services. (2014, December). Mandatory insurer reporting for non-group health plans. Retrieved from <http://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Mandatory-Insurer-Reporting-For-Non-Group-Health-Plans/Overview.html>



**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>. As we discussed before treatment, <side effect/condition> is a known risk of <treatment name>.

It is unfortunate that this occurred. 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, I also understand your dissatisfaction about the cost of your treatment.

For this reason, as a patient courtesy, 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, as a patient courtesy, 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]