The Podiatrist as an Innocent Third Party Creditor

Must a DPM return money if the carrier pays by mistake?

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The insurance company claims that the employee was not entitled to any health coverage for podiatric services, because he or she had previously stopped paying premiums required to maintain coverage.

The question becomes must a podiatrist refund the health plan? If the podiatrist qualifies as an "innocent third party creditor," the answer is no. However, this concept requires some explanation.

The normal rule of law is that money paid out by mistake is fully recoverable by the entity that made the mistake. This right to restitution is based upon the theory that the receiving party should not be allowed to receive "unjust enrichment" from monies they are not entitled to. A number of states have adopted an exception to this rule.

The "innocent third party creditor" exception holds that if the person who received the money was legitimately owed the money for services performed, was unaware that a mistake had been made, had done nothing to indicate the commission of the mistake, then this person is not being unjustly enriched and does not have to repay the monies. An innocent third party creditor is a podiatrist who is owed a debt by a patient, and who has the debt paid by a third party, in this case the health insurer, under the following circumstances:

1) The insurer made the payment solely due to the plan's mistake;

2) The podiatrist made no misrepresentation to induce the insurer to make the payment; and

3) The podiatrist acted in good faith, without prior knowledge or notice of the insurer's mistake, when the podiatrist received the payment.

A podiatrist must satisfy all of these requirements in order to be considered an innocent third party creditor to the third party payer, the health plan or insurer. If these criteria are not met, the podiatrist does not qualify for this status and would be required to make a refund. This appears to be the majority rule.
among the States, but you are advised to consult a healthcare attorney in your state for specific guidance on this topic.

In preparing a response to a health plan's request for a refund, you may consider using the following language:

* Request that the health plan or collection agency cease and desist from contacting your office regarding monies that may be owed by the company's employee.

* Indicate that you are not the company's debtor, but that you are a creditor against whom no collection action can lie.

* Tell the recipient that it is inappropriate to contact you regarding matters solely involving the company and its employees. A request for reimbursement should be directed against the company or its employee only.

* Advise them that you do not have a contract with the health plan or patient's company, and that what the company is entitled to is determined by the company's policy contract with its employees and New York State law.

* Inform the recipient that any refund would be due solely from the employee and not from you as his or her podiatrist. Also indicate that you are an innocent third party creditor, and explain that you satisfy the three criteria previously set forth.

Podiatrists who have signed contracts with managed care plans or health maintenance organizations must be careful that their plan agreements do not nullify their rights as innocent third party creditors. These contracts may prohibit your asserting this defense in response to a demand for a refund. Also, an assignment of payment by a patient to a podiatrist does not waive innocent third party creditor status for the podiatrist.