Giving It Back

CREDIT BALANCE PROCESSING AND ESCHEAT LAWS

By Claudia Murray and Barbara Rubel, MBA

We are taught from an early age that we should always return something that does not belong to us. As adults the rules are the same. This is especially important in our roles as billing agents and collectors; we are the stewards of our client's finances. Just ask the Office of the Inspector General (OIG). In 1998, the OIG published its *Compliance Program Guidance for Third-Party Medical Billing Companies*, which included a list of risk factors the OIG identifies as "particularly problematic." Bullet five on this list is "Inadequate Resolution of Overpayments," otherwise known in the billing industry as resolution of credit balances. In essence, it says that providers may not keep payments that do not belong to them.

Very few, if any, billing companies relish the prospect of resolving credit balances. Much time and effort is devoted to collecting information, creating charges, submitting claims, and collecting payments. To have to spend additional time and energy trying to return this money seems like an untenable situation. And yet the government is very clear in its guidance: "Billing companies should institute procedures to provide for timely and accurate reporting to both the provider and the health care program of overpayments."

Processing and returning credit balances, or "overpayments" as the government calls them, is not optional but mandatory. The term "credit balance" can be defined in a number of ways; however, we will define it as "improper or excess payment made to a practice/provider as a result of patient billing or claims processing errors."

Though a credit balance often means that an actual overpayment of a service has occurred, some credit balances result from a) accounting errors, b) errors in calculating coinsurance amounts, or c) duplicate payments made by the same or other insurers. The government further describes overpayments as payments made by Medicare:

- For non-covered services
- In excess of the allowed amount for an identified covered service
- In error
- As duplicate payments
- When another entity had primary responsibility for payment (63 FR 14517)

The government so objects to providers who fail to return identified credit balances and overpayments that it takes legal action....

It's not uncommon for providers to keep such overpayments until specifically asked to return them or until payers have withheld them from subsequent payments. Some providers may not only keep the overpayments but continue to bill inappropriately, thus creating even more overpayments.

A perfect example is a radiology practice that provides professional X-ray interpretations for a clinic or an independent diagnostic testing facility (IDTF), but that does not append the CPT codes with a 26 modifier, indicating a professional service only has been rendered. The result is the generation of a global payment that can be up to four times the amount of a professional payment—payment for a technical service the practice did not provide. Whether this occurs because of a systems problem or a data entry error due to lack of staff training, if not corrected, this error may be replicated dozens, if not hundreds, of times. And therein lies the problem.

The government so objects to providers who fail to return identified credit balances and overpayments that it takes legal action, charging those who fail to disclose and refund inappropriately paid, retained, and/or converted Medicare and Medicaid monies, credit balances, and overpayments with "retaining" federal property with "intent to convert it to [its] own use." If you suspect you may be in violation, discuss the issue immediately with counsel. Remedial action may include sending a check for the full overpayment to the appropriate payer with a written explanation for both overpayments and billing errors that are clearly unintentional.

On January 25, 2002, Medicare published a rule in the *Federal Register* titled "Reporting and Repayment of Overpayment" that applies to all providers, suppliers, and individuals. In essence, once it has been determined there is a Medicare overpayment/credit balance, it becomes a debt owed to the United States Government.

The rule also addresses the timeliness of refunds and requires Medicare providers to report and return an overpayment to the appropriate intermediary or carrier within 60 days of identifying

(continued on page 11)

(***Giving It Back*** *continued from page 10)*

the overpayment. The Centers for Medicare and Medicaid (CMS) estimates it takes five minutes to process an overpayment. With an estimated 906,724 notifications expected to be submitted on an annual basis, that means the total annual administrative burden would be 75,560 hours or about 8.6 years worth of administrative time!

The rule is a clarion call for billing companies to develop reasonable procedures that address credit balance processing. At a minimum, billing companies should generate credit-balance reports and actively work these accounts on a monthly basis. These accounts can accumulate very quickly if they are ignored and companies should consider assigning dedicated staff to this process rather than viewing it as a task that occurs "when there is extra time."

Credit balance procedures need to be straightforward and should include:

1) Review of the credit balance report
2) Identification of both patient and insurance refunds
3) Initiation of the refund process and delivery of supporting documentation
4) Verification that refund checks are both signed and mailed

Supervisory oversight should be in place and the accounting supervisor should monitor refund checks and take appropriate action if they are not cashed.

A frequently asked question is, "Must a provider refund all monies?" The answer is yes, for both patients and federal payers, i.e., Medicare and Medicaid. For commercial payers, a provider may set a refund threshold—for example, only credit balances of $10.00 or more shall be refunded—remembering the threshold must be a reasonable amount. If two payers are both making primary payments and neither wants to accept the refund, the billing company should keep documentation of all correspondence and telephone calls regarding the identification of the credit balance and any attempts to return the money. If both payers represent non-federal private policies, then the money may be refunded directly to the patient.

If a patient has a credit/overpayment on one or more line items or date(s) of service and an unpaid balance for other services, the credit to the open line item(s) may be applied if the credit originates from the patient, and the patient has given permission to apply the credit in this manner. If, however, the credit/overpayment originates from a payer, it cannot be applied to other services and must be refunded to that payer.

Escheat Laws

In its comments to the OIG regarding the OIG's draft Model Compliance Guidance for Physician Practices, dated July 27, 2000, HBMA recommended that "a credible compliance program will be judged on its overall content—including compliance with state escheat laws." State escheat laws essentially make the state an heir to any unclaimed property, including unidentified payments to providers. Each billing company should refer to its state-specific escheat laws for the specific requirements relating to notifications, time periods, and payment of any unclaimed funds.

Unclaimed property has historically been defined as dormant bank accounts, unrefunded security deposits, uncashed dividend checks, untendered stock shares, and outstanding insurance payments that have been held beyond a specified time. It also includes customer credits, gift certificates or electronic gift cards, and payroll checks.

The time that must elapse before property is deemed abandoned is called the dormancy period and this period varies from state to state. Once the dormancy period has passed, the property must be turned over to the state. Unclaimed property first goes to the state of the owner's (i.e., the patient's) last known address as shown by the billing company or client's records. If the address is not known, the property goes to the state where the client's practice is incorporated.

While relishing the process of resolving credit balances is an unlikely goal for a billing manager, at least in the near future, establishing policies and procedures to govern this activity is just good business practice. Implementing reasonable, logical, and standardized procedures should not only streamline the process, but bring documented accountability to this critical part of the billing process. ▲

Claudia A. Murray provides on-site reviews, educational seminars, and ongoing compliance program auditing reviews for practices and for OIG Corporate Integrity Agreements as an Independent Review Organization (IRO) as well as providing operational assessments, due diligence, and accounts receivable financial analyses for physician practices, imaging centers, and billing services. She can be reached at (410) 538-5891 or ClaudiaAMurray@aol.com.

Barbara F. Rubel, MBA provides new business development, marketing, and client support services for Management Services Network, LLC, a practice management, billing and accounts receivable management company. She serves as president-elect on the RBMA Board of Directors. She can be reached at (770) 431-9783 or bfrubel@mindspring.com.