

## Report on Medicare Compliance Volume 30, Number 34. September 27, 2021 Hospital Settles CMP Case Over Billing HRSA Without COVID-19 as Primary Diagnosis

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By Nina Youngstrom

In a case that illuminates another billing risk unique to pandemic times, Midland Memorial Hospital in Texas has agreed to pay \$555,141 in a civil monetary penalty settlement over claims for uninsured COVID-19 patients submitted to the Health Resources and Services Administration (HRSA).

According to its settlement with the HHS Office of Inspector General (OIG), which was obtained through the Freedom of Information Act, the hospital allegedly submitted fraudulent claims to HRSA's program for COVID-19 claims reimbursement to health care providers and facilities for testing, treatment and vaccine administration for the uninsured. Between April 1, 2020, and Sept. 30, 2020, OIG alleged Midland Memorial Hospital billed for COVID-19 treatment provided to patients without COVID-19 as the primary diagnosis or without pregnancy as the primary diagnosis and COVID-19 as the secondary diagnosis. The hospital disclosed the errors to OIG and was accepted into its Self-Disclosure Protocol on Feb. 4, 2021.

The hospital previously refunded HRSA \$370,094 and agreed to pay \$185,047 as the rest of the settlement with OIG.

Most errors stemmed from sequencing COVID-19 as the secondary diagnosis, although that's consistent with coding guidelines, said Bilal Mushtaq, M.D., president of Paramount Health Solutions, which does coding reviews for Midland Memorial Hospital. With other claims, "documentation didn't support a COVID diagnosis." Paramount now reviews 100% of the hospital's COVID-19 cases "to make sure there aren't any issues from a compliance or any standpoint," he said.

In a statement, the hospital noted that "it is of the utmost importance that Midland Health holds itself to the highest standard of compliance, which led to the discovery and self-reporting in November 2020 of a billing error related to coding a limited number of Covid-19 patients. The error was recognized internally, and immediate steps were taken to audit all similar cases, report the findings, create a remediation plan, and repay monies back to [HRSA]. Midland Health self-reported the findings to [OIG]. After investigating, we have agreed to the settlement of a civil monetary penalty. We appreciate the cooperation from the OIG and the joint effort to make sure all compliance measures are met and continue to be met moving forward."

Hospitals and other providers should pay attention to the integrity of the claims they submit to the HRSA program for the uninsured. Like the Provider Relief Fund (PRF),<sup>[1]</sup> the HRSA uninsured program offers vast sums of money for certain COVID-19 services if providers comply with HRSA's terms and conditions.<sup>[2]</sup> Auditors and enforcers have set their sights on abuse of COVID-19 relief funds.

"Pandemic-related fraud is a key enforcement priority for the Department of Justice," said attorney Ahsin Azim, with King & Spalding in Washington, D.C. "There are watchful eyes on this money, who it's going to and how it's being used." OIG is auditing payments to providers by the HRSA uninsured COVID-19 program and the PRF.

The HRSA uninsured program reimburses providers for three categories of COVID-19 services—testing,

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treatment of patients who have a COVID-19 diagnosis, and vaccine administration—provided on or after Feb. 24, 2020, Azim said. Providers are generally paid 100% of Medicare rates, he said.

“HRSA lays out what’s covered and what’s excluded,” Azim said. The three main exclusions:

1. Outpatient prescription drugs.
2. Hospice services.
3. Any treatment without COVID-19 as the primary diagnosis, except for pregnancy, according to HRSA’s website.<sup>[3]</sup> When patients are pregnant, COVID-19 may be listed as the secondary diagnosis. “For dates of service or discharges on or after April 1, 2020, providers will use primary diagnosis U07.1 to indicate COVID-19 is the primary reason for treatment except for pregnancy for which providers will use O98.5- as primary diagnosis and U07.1 as the secondary diagnosis. For dates of services or discharges prior to April 1, 2020, there is no equivalent diagnosis to indicate COVID-19 is the primary reason for treatment. To address this issue, HRSA has established separate guidance for this program to use B97.29 as the primary diagnosis when COVID-19 is the primary reason for treatment except for pregnancy for which providers would use O98.5- as the primary diagnosis and B97.29 as the secondary diagnosis (similar to how U07.1 is used).”

HRSA’s coding policy conflicts with coding guidelines, which HRSA acknowledges. “HRSA recognizes that the use of B97.29 as the primary diagnosis as described above is different from the ICD-10-CM Official Coding Guidelines – Supplement for Coding encounters related to COVID-19 Coronavirus Outbreak. HRSA is not providing coding guidance to providers. Rather, HRSA is providing billing guidance to allow providers to identify and submit only claims eligible for reimbursement under this program, which is exclusively for reimbursing providers for COVID-19 testing of uninsured individuals and for treatment for uninsured individuals when COVID-19 is the primary reason for treatment, except as noted,” the website explained.

HRSA’s position on primary and secondary coding “is not without controversy,” said attorney Daniel Hettich, with King & Spalding in Washington, D.C. The American Hospital Association (AHA) sent a letter in May to HRSA urging it to allow hospitals to use COVID-19 diagnosis codes in the primary or secondary fields on the claim.<sup>[4]</sup> “Otherwise providers will be faced with the dilemma of having to violate HIPAA code set rules if they want to be reimbursed for the care of the uninsured,” AHA noted. So far HRSA is sticking to its guns.

Before submitting claims to the HRSA uninsured fund, providers are required to verify patient eligibility, which means patients aren’t covered for COVID-19-related services by employer-sponsored insurance, Medicare, Medicaid or other health plans, Azim said.

## **‘Severe Consequences’ for Noncompliance**

As they do with the PRF, which is also run by HRSA, hospitals and other providers who are paid from the HRSA uninsured program must attest to their compliance with its terms and conditions.

Noncompliance can have “severe consequences,” including recoupment and administrative, civil or criminal enforcement actions, Azim said. “And any deliberate omission, misrepresentation or falsification in a request for reimbursement could mean having Medicare billing privileges revoked or being excluded from federal health care programs. It’s crucial that payment recipients review the terms and conditions and ensure continuing compliance with them.”

Some of the terms and conditions will be familiar from the PRF. For example, providers must certify they won’t

use HRSA uninsured funds to reimburse themselves for services paid by other sources (e.g., health plans). “It’s exactly what we see in the PRF,” Azim said. “You can’t double dip.” If they wind up getting the money from another source, providers must return HRSA’s funds that duplicate payment from the other source.

OIG is scrutinizing payments to providers from the HRSA uninsured program. It’s an item on the Work Plan, with a report due this year.<sup>[5]</sup> OIG “will determine whether claims for COVID-19 diagnostic testing and treatment services reimbursed by HHS through HRSA’s COVID-19 Uninsured Program complied with Federal requirements.”

Meanwhile, HHS has moved all PRF information from the HHS website to the HRSA website, Azim said. HHS has given providers a 60-day grace period for complying with PRF reporting requirements, extending the deadline for the first round beyond Sept. 30.<sup>[6]</sup> The grace period starts Oct. 1 and will end Nov. 30.

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**1** Nina Youngstrom, “Providers Risk Recoupment or Worse for PRF Noncompliance; Consider a Mock Audit,” *Report on Medicare Compliance* 30, no. 12 (March 29, 2021), <https://bit.ly/3EUTWSe>.

**2** Health Resources and Services Administration, “Terms and Conditions for Participation in the HRSA COVID-19 Claims Reimbursement to Health Care Providers and Facilities for Testing, Treatment, and Vaccine Administration for the Uninsured Program,” accessed September 23, 2021, <https://bit.ly/3lVUIpr>.

**3** “COVID-19 Claims Reimbursement,” Health Resources and Services Administration, accessed September 23, 2021, <https://bit.ly/3CBbFMv>.

**4** Ashley Thompson, letter to Thomas J. Engels, May 2, 2020, <https://bit.ly/2XKCi2T>.

**5** “Audit of Health Resources and Services Administration’s COVID-19 Uninsured Program,” Work Plan, OIG, accessed September 23, 2021, <https://bit.ly/3AEqaP8>.

**6** Health Resources and Services Administration, “Provider Relief Fund Reporting Requirements and Auditing,” September 2021, <https://bit.ly/3AAjhhr>.

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