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PATIENT CREDIT BALANCES AND THE TEXAS UNCLAIMED PROPERTY LAW

by Isreal Miller and Elise Schuller Barajas
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Patient credit balances occur when a health care provider collects more coinsurance, copays and/or deductibles than it earned. Although this situation arguably beats the alternative of trying to collect earned fees from patients who underpaid, the fact that the collected fees are unearned means the health care provider has inadvertently accepted fiduciary responsibility for the funds. In addition to having to safeguard the funds from potential loss, the health care provider is also facing penalties and interest from the Texas Comptroller of Public Accounts (the “Comptroller”) for failing to timely turn over unclaimed property.

Title 6 of the Texas Property Code requires an individual or entity that is holding property to which it does not have legal claim (the “holder”) to turn that property (the “unclaimed property”) over to the rightful owners by July 1st each year. If the holder cannot locate the rightful owners, it must turn the unclaimed property over to the Comptroller. Holders who fail to report and remit unclaimed property on time will be assessed interest and penalty from the date the property should have been turned over until the date it is received by the Comptroller. Fortunately, both penalties and interest can be waived by the Comptroller if the holder enters into a Voluntary Disclosure Agreement (a “VDA”) and reports and remits the unclaimed property voluntarily. However, once the Comptroller initiates an investigation, the holder is precluded from entering into a VDA.

The holder must determine what unclaimed property it has that has been unclaimed for at least three years as of March 1 of each year. The abandonment period begins with the most recent communication with the patient. For example, if the last time the holder and the patient communicated was at an office visit on February 1, 2016, then as of March 1, 2019, the holder needs to prepare to report that patient’s credit balance on its next unclaimed property report. If the patient’s credit balance is more than \$250.00, the holder must send a letter by May 1, 2019, notifying the patient of the credit balance and offering to pay it over to the patient directly. If the balance is \$250.00 or less, the holder should attempt to contact the patient by phone or email. If the patient does not respond to the holder, the holder must report and remit the unclaimed property to the Comptroller by July 1, 2019.

To assist holders with meeting their reporting requirements, the Comptroller prepared a 45-page manual titled “2019 Unclaimed Property Reporting Instructions,” which is available online [here](#). However, because of the potential penalty and interest associated with failing to timely report and remit unclaimed property, it is also important to obtain legal counsel to assist you if you have accumulated patient credit balances for patients that you no longer serve. It is also vital to have a plan for reporting and remitting unclaimed property before retiring or closing a practice.

ABOUT THE AUTHORS



Isreal Miller, Counsel - imiller@grayreed.com

Leader of the firm’s State and Local Tax Practice Group, Isreal advises clients in state and local taxation matters and resolves related audits and litigation, primarily involving Texas sales and use tax, franchise tax and property tax. Before joining Gray Reed, Isreal served for five years as a trial attorney for the Texas Comptroller of Public Accounts. He is Board Certified in Tax Law by the Texas Board of Legal Specialization, a Certified Public Accountant and a Certified Financial Planner™.



Elise Schuller Barajas, Counsel - ebarajas@grayreed.com

Elise is a collaborative dealmaker and ongoing advisor in a variety of healthcare transactional, operational and compliance matters. She represents a diverse group of healthcare clients throughout Texas and Oklahoma, including acute care hospitals, joint venture hospitals, ambulatory surgery centers, physician practices, dental practices, optometrists, long-term care facilities, ancillary providers and clinically integrated networks. Elise is Board Certified in Health Law by the Texas Board of Legal Specialization.