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## BUSINESS

## Self-insured companies going after doctors to recover "overpaid" claims

**There is no clear time limit on how far back ERISA-protected companies can go to recoup money. One company is turning that into a business.**

By [Emily Berry](#), AMNews staff. Posted April 13, 2009.

When Snellville, Ga., internist Joel Fine, MD, read a note from a company called Health Research Insights, he thought it sounded a little bit like a chain letter -- vaguely threatening, insistent on a quick response, with few details.

The letter, addressed "Dear Health Care Professional," accused Dr. Fine of upcoding four claims for treating Georgia-Pacific employees. The earliest dated back to February 2005. "Of course, I was offended," Dr. Fine said.

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HRI's letter offered him two choices: pay \$347 to "immediately settle this issue" or send complete records proving he did not incorrectly bill for the visits in question. The letter warned that if Dr. Fine did not pay HRI or contact them with records to prove his innocence, his case could be turned over to federal authorities.

"The intimidation is really strong here," he said. "They are working under the guilty-until-proven-innocent philosophy."

HRI, which sent Dr. Fine the letter in February, works on behalf of large companies with self-funded plans to recoup money it says those firms overpaid to doctors. These types of plans' activities are regulated by the Employee Retirement Income Security Act.

What makes HRI's effort different from the kind of payback attempts physicians might be accustomed to is HRI's claim -- not yet legally countered -- that plans operating under ERISA law aren't limited by the constraints many states put on insurers, particularly in how far back in time they can go to reclaim payment.

If HRI prevails and collects money for its clients, physicians could get more letters like the one Dr. Fine received, attorneys and benefits experts said.

"Clearly, if this is successful, it will spread," said Mark Johnson, PhD, former managing director of benefits compliance and pensions for American Airlines. He now runs a Grapevine, Texas-based consultancy advising companies on ERISA law.

Since late last year, thousands of doctors in Georgia and Tennessee have received letters from HRI similar to Dr. Fine's. The Indiana State Medical Assn. says it has received a warning from HRI that it will start collection efforts in that state.

Like health plans, HRI identifies physicians it believes are above the norm in the number of high-level codes they submit and targets them for recoupments. Unlike health plans, however, HRI does not analyze individual medical records along with the claims.

It uses, by the company's own description, an algorithm to determine the amount of upcoding and overpayment -- then demands that the physicians produce the medical records and other paperwork to fight the claim.

Blues plans in Tennessee and Georgia, which serve as third-party administrators for ERISA plans, have posted notices that disassociate themselves from HRI's efforts.

### **Company claims authorization**

HRI's chief executive officer, Theodore Perry, PhD, wouldn't talk to *American Medical News*. But the company's Web page describes its business as authorized under ERISA.

According to HRI's Web site, the company doesn't arbitrarily target physicians for collections efforts, but rather "only targets providers who have willfully and persistently over a period of time overbilled for the services they have provided. An occasional mistake will not cause them to be included in the HRI recovery process."

Sheila Weidman, a spokeswoman for Georgia-Pacific, a company that has hired HRI in Georgia, said the company has confidence in HRI's methods. She said Georgia-Pacific hired HRI in 2008 to examine its past medical claims for possible overpayments in all of its locations nationally.

Georgia-Pacific authorized HRI to send collection letters "on a pilot basis" to doctors in the Atlanta, Savannah and Brunswick areas of Georgia, where Georgia-Pacific has a combined 5,400 employees. The 1,100 letters went out beginning in January, Weidman said.

If the pilot is successful, she said, Georgia-Pacific could ask HRI to contact physicians across the country who have cared for any of its 45,000 employees.

Tennessee physicians have been contacted by HRI on behalf of trucking company Averitt Express Inc. The company in Indiana has not been identified.

The Medical Assn. of Georgia said it has gotten HRI to stop collections efforts there until it can investigate its work, and the Tennessee Medical Assn. is contacting federal officials and companies that have hired HRI.

Battling overpayment claims from years-old visits is not a new job for MAG, said association General Counsel Donald Palmisano Jr. Limiting health plans' attempts to bill doctors for alleged overpayments became part of class-action settlements reached with health plans over the past few years across the country.

American Medical Association President Nancy H. Nielsen, MD, PhD, said the AMA is working with state medical associations to investigate HRI's work to fight any activities that "lack merit."

### **Physicians' options**

Health care attorneys and experts in ERISA law said doctors who receive the type of letter Dr. Fine received from HRI should think twice before just sending a check.

"The reality is you don't even have to talk with these people," said Michael F. Schaff, an attorney who specializes in health care and contracting with the firm Wilentz, Goldman & Spitzer in Woodbridge, N.J.

"Until they show they have some type of authority, they're bluffing," he said. "This comes out of the blue saying, 'You owe us X amount of dollars.' To me, that's extortion."

Then there's the statute of limitations question. Health plans that take on risk for employers and pay claims are governed by state law, thus they are limited to collecting overpayments only for a few years back in many states -- one year in Georgia, 18 months in Tennessee, two years in Indiana.

The statute of limitations for ERISA claims is much less clear-cut, said Brian S. King, a Salt Lake City-based attorney specializing in health care litigation and contracting, particularly ERISA-related cases.

"I've read opinions on that subject where judges use words like 'incomprehensible' or 'opaque,' " he said.

As a bottom line, attorneys and benefits experts say physicians who are contacted by HRI or a company like it should try to shift the burden of proof back to the people trying to collect, he

said.

But doctors should expect a fight, if Dr. Fine's experience is any indication.

Dr. Fine said his wife, who helps manage his practice, tracked down the phone number of an HRI executive. Dr. Fine said he called the number and identified himself as a recipient of a collection letter. He asked, "Why are you picking on doctors? We're the good guys."

The response he said he got was, "It's very legal. We have lawyers. We're going to keep doing this, and lots of it."

This content was published online only.

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#### ADDITIONAL INFORMATION:

#### "Dear Health Care Professional ..."

Franklin, Tenn.-based firm Health Research Insights has been contacting physicians in Georgia and Tennessee (and soon will do so in Indiana) attempting to collect overpayments on behalf of self-insured employers. Joel Fine, MD, an internist from Snellville, Ga., received one of the letters, dated Feb. 12, and excerpted here:

Dear Health Care Professional,

Georgia-Pacific maintains a self-funded employee health benefit plan for which BlueCross BlueShield serves as the third-party administrator (TPA). Georgia-Pacific contracts with Health Research Insights (HRI) to recover funds paid by the TPA as a result of claims submitted with inaccurate or incorrect coding information. In order to perform this review and recovery, HRI maintains a HIPAA-compliant Business Associate Agreement with Georgia-Pacific plan. We analyzed claims information that your office submitted to the TPA and determined that medical claims enclosed with this letter were incorrectly billed, resulting in an overpayment to you of **\$347.36**.

**Your action is required** within 15 days to settle the identified billing discrepancies:

(1) To immediately settle this issue, please refund the overpayment shown above. Return the remittance slip on the bottom of this page to ensure that your account is credited properly and make your check payable to "**HRI In Trust for Georgia-Pacific**" and include the account number xxxxxxxxxx on the check.

(2) If you believe the claims were improperly submitted by your organization, submit all appropriate medical records, case notes, and/or other documentation sufficient to justify your billing. Fax all supporting documentation to **615-263-0196** along with a cover sheet and a copy of this letter. Submitted documentation will be reviewed by an independent certified coding vendor. You will be notified in writing as to the outcome of this review.

You must take action as outlined in items (1) or (2) above, in order to ensure compliance with the Employee Retirement Income Security Act of 1974 (ERISA). ERISA is the federal law that, among other things, governs health benefit plans in private industry. Investigation of potential ERISA violations is given to the United States Secretary of Labor pursuant to sections 504 and 506 as amended by the Comprehensive Crime Control Act of 1984 and enforced by the US Department of Labor.

In the event HRI is not contacted by you or your designee, a Complaint may be filed with the Employee Benefits Security Administration (EBSA). You may view additional information at ([www.dol.gov/ebsa](http://www.dol.gov/ebsa)).

If you have any questions or concerns, please feel free to contact HRI at 615-916-4480.

Sincerely,  
Health Research Insights  
Recovery Department

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### **Weblink**

Health Research Insights' answers to frequently asked questions regarding the identification and recovery process ([www.healthresearchinsights.com/faq.html](http://www.healthresearchinsights.com/faq.html))

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