CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES

Common Pitfalls of the Medicare Secondary Payer Process & How to Avoid Them

The View from CMS

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Presentation Overview

- Coordination of Benefits & Recovery (COB&R) overview
- The Medicare Secondary Payer (MSP) recovery process & common issues
  - Reporting your case
  - Authorizations
  - Conditional Payment information
  - Demand letters
  - Appeals
  - Treasury referral process
- Questions

COB&R (Coordination of Benefits & Recovery) Overview

- Coordination of benefits (COB) allows plans that provide health and/ or prescription coverage for Medicare beneficiaries to determine which plan has primary payment responsibility.
- Medicare collects data from multiple sources for COB purposes
  - 42 CFR 411.25 establishes an obligation for primary payers to provide notice of their primary payment responsibility to Medicare.
  - Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) added mandatory reporting requirements with respect to beneficiaries who have coverage under group health plan (GHP) arrangements as well as for beneficiaries who receive settlements, judgments, awards or other payment from liability insurance (including self-insurance), no-fault insurance, or workers' compensation, collectively referred to as Non-Group Health Plan (NGHP) insurance ("Applicable plans").

COB&R (Coordination of Benefits & Recovery) Overview

- Under 42 U.S.C. Section 1395y(b)(2)(A) and (B), liability insurance (including self-insurance), no-fault insurance, and workers' compensation must pay for medical items and services before Medicare pays.
- However, Medicare makes "conditional payments" while the insurance or workers' compensation claim is being processed to make sure beneficiaries receive medical services timely.
  - If beneficiaries receive a settlement, judgment, award, or other payment, Medicare is entitled to be repaid for the items and services it paid conditionally.
  - One exception is when an applicable plan reports or has effectively reported Ongoing Responsibility for Medicals (ORM); in this situation, Medicare will not make conditional payment as the plan has reported that it has assumed primary payment responsibility.

COB&R (Coordination of Benefits & Recovery) Overview

- CMS contracts with the Benefits Coordination and Recovery Center (BCRC) and the Commercial Repayment Center (CRC) to implement the COB&R program

Benefits Coordination & Recovery Center (BCRC)

- The BCRC is responsible for the collection and compilation of COB data (including both self-reported and MMSEA Section 111 MSP information)
- The BCRC is also responsible for the recovery of debts where the beneficiary is the identified debtor

Commercial Repayment Center (CRC)

- The CRC is generally responsible for recovery where the identified debtor is not a beneficiary
  - The CRC handles all GHP recovery
  - The CRC handles Workers' Compensation and No-Fault insurance recovery where the identified debtor is the applicable plan (generally ORM situations)

Communicate with the right contractor

- Always report your case to the BCRC
- Once the recovery process has begun, be mindful of where you send correspondence
  - Always communicate with the contractor that contacts you first; sending correspondence to the incorrect contractor can lead to unnecessary delays in processing your case

The Medicare Secondary Payer (MSP) Recovery Process

- How to report your case
  - Method of reporting depends upon the status of the claim and your standing within the case.
  - MMSEA Section 111 reporting is appropriate when:
    - You are a Section 111 Responsible Reporting Entity (RRE), and
    - The claim has settled (a Total Payment Obligation to Claimant, or TPOC, exists) **or** there is ORM.
  - "Self-reporting" is appropriate when:
    - You are **not** a Section 111 Responsible Reporting Entity (RRE), or
    - The claim has **not** settled (there is no TPOC) and there is **no** ORM.

The Medicare Secondary Payer (MSP) Recovery Process

- When reporting your case (both self-reporting and Section 111)…
  - Be selective when reporting diagnosis codes
  - Don't report every diagnosis code from the initial visit
    - Be mindful of codes for pre-existing conditions
  - Avoid reporting generic diagnosis codes, such as "Shortness of breath" or "Back pain"
    - We need to know what caused the shortness of breath or back pain to appropriately identify Medicare payments

The Medicare Secondary Payer (MSP) Recovery Process

- When reporting your case (Section 111)…
  - When reporting ORM and a TPOC, don't forget to term the ORM record if the TPOC terminates the ORM
    - Accidentally keeping the ORM record open can cause Medicare to deny claims and to attempt additional recovery against the insurer/ carrier
  - Report the **total** TPOC/ settlement amount

The Medicare Secondary Payer (MSP) Recovery Process

- When reporting your case (Section 111)…
  - Don't report provider payments as TPOCs
    - Only report settlements, judgments, awards, or other payments made to the **claimant**
  - Be mindful that updating "matching criteria" (date of incident, policy number, etc) or the TIN reference file can cause duplicative records
    - Matching criteria can be found in the Technical Information volume of the Section 111 NGHP User Guide

The Medicare Secondary Payer (MSP) Recovery Process

- When reporting your case (self-reporting)…
  - Please notify the BCRC if you have a case that needs “special handling”
    - When multiple claims with different dates of incident are being settled together, the BCRC can simply create one case with one demand
    - If the converse occurs (multiple claims for the same date of incident), the BCRC can create multiple demand

The Medicare Secondary Payer (MSP) Recovery Process

- Authorizations
  - CMS and its contractors need written authorization from the identified debtor in a recovery case to be able to discuss the matter with anyone other than the identified debtor
  - There are three broad categories of authorizations: Proof of Representation, Consent to Release, and Letter of Authority

The Medicare Secondary Payer (MSP) Recovery Process

- Authorizations: Proof of Representation
  - Appropriate when a Medicare beneficiary has authorized an individual or entity (such as a law firm) to act on the beneficiary's behalf
  - The representative may receive correspondence and take actions on the case, such as appeal the demand when appropriate
  - Communication with the BCRC is a "two way street": the BCRC will both provide information to and act upon information provided by the authorized party

The Medicare Secondary Payer (MSP) Recovery Process

- Authorizations: Consent to Release
  - Appropriate when a Medicare beneficiary has authorized an individual or entity (such as an insurer or carrier) to receive information about the beneficiary's case
  - The representative may receive correspondence but may **not** take actions on the case (such as appeal the demand)
  - Communication with the BCRC is a "one way street": the BCRC will only provide information to the authorized party and will **not** act upon information provided by the party with only a consent to release level of authorization

The Medicare Secondary Payer (MSP) Recovery Process

- Authorizations: Letter of Authority
  – Appropriate when an applicable plan has authorized an individual or entity (such as a law firm or recovery agent) to act on the insurer's or carrier's behalf
  – The representative may receive correspondence and take actions on the case, such as appeal the demand when appropriate
  – Communication with the CRC is a "two way street": the CRC will both provide information to and act upon information provided by the authorized party

The Medicare Secondary Payer (MSP) Recovery Process

- Authorizations
  - For cases handled by the BCRC, the Proof of Authorization or the Consent to Release are appropriate to submit, depending upon your role and relationship with the beneficiary
  - For cases handled by the CRC, the Letter of Authority is appropriate to n applicable plan to resolve a debt

The Medicare Secondary Payer (MSP) Recovery Process

- Authorizations
  - Note that should the identified debtor change, authorizations do **not** automatically transfer
    - If the case was being handled by the CRC (for example, recovering against an applicable plan for ORM), and the case settles, the identified debtor for the settlement becomes the beneficiary. The carrier (or its agent) are not presumed to be automatically authorized by the beneficiary.

The Medicare Secondary Payer (MSP) Recovery Process

- CP Information
  - The Conditional Payment Letter (CPL) is issued by the BCRC on a beneficiary debtor case when there is no ORM assumed and/ or the case has not yet settled
  - The Conditional Payment Notice (CPN) is issued by the BCRC on a beneficiary debtor case when the first report of the case indicates that the case has already settled

The Medicare Secondary Payer (MSP) Recovery Process

- CP Information
  - The CPL is issued by the CRC on an applicable plan debtor case when there is not complete certainty that ORM has been assumed
  - The CPN is issued by the CRC on an applicable plan debtor case when the first report of the case indicates that ORM has been assumed

The Medicare Secondary Payer (MSP) Recovery Process

- CP Information
  - For both the BCRC and CRC, the CPL is an open-ended letter without a specified response timeframe whereas the CPN has a specified response timeframe before the demand letter is automatically issued

The Medicare Secondary Payer (MSP) Recovery Process

- CP Information
  - Note that electronic CPLs can be requested through the Medicare Secondary Payer Recovery Portal (MSPRP)

The Medicare Secondary Payer (MSP) Recovery Process

- Notice of Settlement
  - The BCRC will automatically adjust the beneficiary's demand amount for any procurement costs, so be sure to report the full settlement amount (do **not** deduct attorneys' fees, etc)
    - Completing the "Final Settlement Detail Document" can assist with the processing of your notice of settlement
    - Insurers/ carriers are not entitled to a pro rata reduction

The Medicare Secondary Payer (MSP) Recovery Process

- Demand letters
  - Issued once notice of settlement is received or no less than 60 days following the CPN
  - The demand letter is legal notice that a debt is owed to CMS and explains the legal rights and responsibilities of the identified debtor

The Medicare Secondary Payer (MSP) Recovery Process

- Demand letters
  - The conditional payments listed within a demand letter are the result of a search made immediately prior to issuing the demand letter in combination with any disputes to the CPL/ CPN
    - Providers have 12 months to bill Medicare, so additional payments may be made between the last CPL/ CPN and the demand, especially if the case was reported soon after the date of incident and some time has passed between the last CPL/ CPN and the demand letter generation

The Medicare Secondary Payer (MSP) Recovery Process

- Appeals
  - Beneficiaries and applicable plans (effective for demand letters issued to applicable plans on or after April 28, 2015) are able to appeal Medicare's recovery claim should they disagree with the existence or amount of the debt listed in the demand letter
  - Note that only the identified debtor or their properly approved authorized representative may appeal the debt

The Medicare Secondary Payer (MSP) Recovery Process

- Appeals
  - Appeal instructions appear in the demand letter, including the timeframe for the appeal and address where to submit the appeal

- Appeals
  - The appeal request must be in writing, explain what is being appealed and include any new evidence
    - Deadline is 120 days from receipt of the demand letter. Demand is presumed to be received within 5 days of the date on the demand, absent proof to the contrary
    - The decision issued at each level of appeal provides information regarding further appeal

The Medicare Secondary Payer (MSP) Recovery Process

- The appeals process
  1. "Initial determination" (the demand letter)
  2. "Redetermination" by the contractor issuing the demand letter
  3. "Reconsideration" by a CMS QIC (Qualified Independent Contractor)
  4. "Hearing" by an Administrative Law Judge (ALJ)
  5. "Review" by the Departmental Appeals Board's Medicare Appeals Council (DAB MAC)
  6. Judicial review

The Medicare Secondary Payer (MSP) Recovery Process

- When submitting an appeal, make sure…
  - …your authorization is either already in place or submitted with the appeal if you are not the identified debtor
    - You can check the status of your authorization in the MSPRP
  - … all supporting documentation is included with your appeal
  - … you do not wait until the last minute to submit your appeal
    - In the event your appeal is dismissed for certain specific reasons, you may be able to rectify the situation

The Medicare Secondary Payer (MSP) Recovery Process

- The Debt Collection Improvement Act of 1996, as amended by the DATA Act, mandates delinquent debts be referred to the Department of Treasury **no less than** 120 days' delinquency
  - Delinquency is defined as an unresolved debt that is over 60 days old

The Medicare Secondary Payer (MSP) Recovery Process

- Debts may be referred earlier than the 120 days' delinquency as long as due notice (the Intent to Refer letter) has been given at least 60 days in advance of referral and there are no appeals pending

The Medicare Secondary Payer (MSP) Recovery Process

- Once a debt has been referred to the Department of Treasury, CMS contractors cease all active recovery efforts
  - The Department of Treasury may collect through its Private Collections Agencies (PCAs), the Treasury Offset Program (TOP), or other collections efforts
- Try to stay on top of timeframes to avoid referral
  - It can take weeks to complete the recall of that debt from the Department of Treasury, during which time it may continue its recovery efforts

Final Thoughts

- Carefully read your correspondence
- Monitor timeframes
- Take advantage of tools like the MSPRP and information posted to CMS.gov
- Please contact the BCRC and CRC should you have questions about how a case is handled

Questions

- Thank you for your time