



STATEMENT OF
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ON
PROTECTING MEDICARE WITH IMPROVEMENTS TO
THE SECONDARY PAYMENT REGIME

BEFORE THE
U. S. HOUSE COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

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**House Committee on Energy and Commerce
Subcommittee on Oversight and Investigations**

Hearing on Protecting Medicare with Improvements to the Secondary Payment Regime

June 22, 2011

Chairman Stearns, Ranking Member DeGette, and Members of the Subcommittee, thank you for the opportunity to discuss the Centers for Medicare & Medicaid Services' (CMS) Medicare Secondary Payer (MSP) reporting and recovery policies regarding Non Group Health Plans (NGHP). Liability insurance (including self-insurance), no-fault insurance, and workers' compensation are generally referred to as NGHP. Section 111 of the Medicare, Medicaid, and SCHIP Extension Act (MMSEA) of 2007 (P.L. 110-173) included new reporting requirements for certain group health plan arrangements and NGHPs, but did not change or eliminate existing MSP requirements. However, the NGHP industry's unfamiliarity with these MSP rules has led to some level of confusion related to the reporting requirements and the responsibility of NGHPs under the law. CMS is committed to a transparent implementation of Section 111 of MMSEA, and we look forward to working with our private and public sector partners as we continue implementing these requirements.

Overview

The MSP law is an important mechanism for protecting the fiscal integrity of the Medicare program and the Medicare Trust Funds. Over the last decade, total MSP savings have exceeded \$50 billion. The MSP law ensures that Medicare does not pay for medical items and services if another entity, such as an NGHP, is responsible for payment of those same medical items and services. MSP policies establish that certain other insurance payers have "primary" payment responsibility before Medicare, which is designated as the "secondary payer" or payer of last resort when another insurer has a legal responsibility to pay for care of a person with Medicare. Terms such as primary and secondary identify the descending order of payment responsibility that an insurer has for a particular claim. For example, if a beneficiary slips and falls in a grocery store, the store's insurance, and not Medicare, may be responsible for health care costs related to that injury.

Medicare has been secondary to workers' compensation since the inception of the Medicare program. In the Omnibus Budget and Reconciliation Act of 1980 (OBRA 1980), Congress expanded the MSP provisions to make Medicare secondary to liability insurance, including self-insurance, and no-fault insurance effective December 5, 1980. And, as noted above, the most recent amendment- the MMSEA- requires certain group health plan arrangements and NGHPs to provide the Secretary of Health and Human Services (HHS) with information identifying situations where the plan is or has been primary to Medicare. While MSP is specific to the Medicare program, all insurance providers, public and private, utilize a system similar to the MSP program to resolve conflicting coverage issues with other carriers.

In order to ensure continuity of care for Medicare beneficiaries, Medicare may pay conditionally in situations where the NGHP does not pay promptly; however, Medicare makes such conditional payments subject to reimbursement. If Medicare makes a conditional payment, Medicare has both a statutory right of recovery from the insurer legally required or responsible to pay for this care, as well as subrogation rights. The MSP statute specifically gives Medicare a priority right of recovery when a NGHP is required or responsible for primary payment, as demonstrated by a settlement, judgment, award, or other payment.

Medicare's Recovery Process

Medicare's NGHP recovery process is comprised of several steps. Ideally, the beneficiary or his representative notifies CMS' Coordination of Benefits Contractor (COBC) about the beneficiary's pending NGHP claim. The COBC enters and transmits NGHP claim data to CMS' Medicare Secondary Payer Recovery Contractor (MSPRC). The system used by the MSPRC begins to compile conditional payments Medicare has already made on behalf of the beneficiary and his associated health care expenses that are related to the NGHP claim. The MSPRC issues a Rights and Responsibilities letter that requests proof of representation and explains the applicable MSP law to the beneficiary and his lawyer or other representative so that they understand how the MSP recovery process works and what to expect. Once Medicare's computer system has identified Medicare payments for the beneficiary, the MSPRC will review the payment data and identify which payments it believes are related to the beneficiary's NGHP claim. The MSPRC then issues a conditional payment letter, which includes a payment

summary form that lists the payments that Medicare has identified as related to the beneficiary's NGHP claim.

The beneficiary submits to the MSPRC information regarding the gross amount of his settlement, judgment, award, or other payment, along with the amount of attorney fees and any other expenses the beneficiary incurred in order to obtain his settlement, judgment, award, or other payment. The MSPRC will apply a pro rata reduction to account for the attorney fees and costs the beneficiary incurred and then the MSPRC will issue a Medicare recovery demand letter for money owed to the Medicare Trust Funds, if appropriate. Once the beneficiary reimburses Medicare, the MSPRC will close its case and annotate its system accordingly.

If the beneficiary or his or her representative disagrees with the amount of Medicare's recovery claim or believes that Medicare should waive recovery of its claim, the beneficiary or his representative can file an administrative appeal or seek a waiver. The beneficiary demand letter provides information on appeal rights and instructions for filing an appeal or waiver of recovery request.

In instances where a beneficiary or his or her attorney does not proactively notify the COBC of his or her pending case in a timely fashion, Medicare may not learn of the case until the NGHP advises Medicare of the settlement, judgment, award, or other payment. As a result, there may be a delay in issuing the conditional payment letter and completing the recovery process.

The NGHP reporting process established by Congress in MMSEA has significantly increased the number of NGHP cases that have been identified and, as a result, provided additional recoveries for the Medicare Trust Funds. With successful implementation of the Section 111 reporting process and the corresponding increase in the public awareness of their obligations under the longstanding MSP provisions, new NGHP cases have nearly doubled since the passage of MMSEA. To put this in context, the MSPRC received approximately 413,000 new NGHP cases and issued over 74,000 NGHP recovery demands in FY 2010, a significant increase from the 222,000 NGHP cases received and 43,000 recovery demands in FY 2007. We project further

increases in the number of cases reported when mandatory reporting for the remaining liability insurers is implemented, which is scheduled for January 1, 2012.

When a NGHP is properly identified as the primary payer and pays promptly, Medicare often does not receive a bill for the associated services and has no way to calculate associated savings to the program. This is particularly true for no-fault insurance and workers' compensation claims.

Any restrictions on existing MSP rights or recovery processes would adversely affect savings that would otherwise accrue to the Medicare Trust Funds through MSP recovery activities, as well as the \$1 billion per year in cost-avoided savings that CMS is able to track. Proposals that would impose mandatory process changes may affect Medicare's status as a secondary payer or its priority right of recovery, as well as CMS' ability to prioritize its own workload. These changes may also have the unintended effect of undercutting the underlying intent of the statute, increasing costs, and reducing existing savings.

Implementation of Section 111 of MMSEA

CMS implemented the mandatory reporting requirements in Section 111 in a transparent and open manner. To support this transparent approach, CMS has taken several steps:

- Established a website, <http://www.cms.gov/MandatoryInsRep/>, where CMS issues and maintains all official instructions and guidance related to implementation of the new reporting requirements. This includes User Guides for both GHP and NGHP reporting as well as associated ALERT guidelines and other guidance. The website also has a dedicated e-mail resource mailbox to receive concerns and questions. Through the website and e-mail mailboxes, CMS has received over 10,000 questions and comments regarding implementation of Section 111 and has used this information to develop and refine the instructional materials available on the website.
- Held regular town hall conference calls to reach out to representatives of the insurance industry, trade associations, and attorneys. Since January 2008, CMS has held 68 calls with a total of 34,000 participating attendees. After the outreach calls, full transcripts for each call are posted to the dedicated Section 111 website as an educational resource.

- Instituted new beneficiary education efforts through MyMedicare.gov, as beneficiaries are on the front line of receiving health care services.
- Met with various national organizations (and their members) including the American Insurance Association (AIA), the Property and Casualty Insurance Association of America (PCIA), the Physician Insurers Association of America (PIAA), the American Association for Justice (AAJ), and the Medicare Advocacy Recovery Coalition (MARC). CMS has also discussed the new MSP reporting requirements at other conferences sponsored by these organizations and other groups.
- Developed Computer Based Training (CBT) to educate GHPs and NGHPs on MSP provisions, as well as Section 111 reporting. Courses are broken down into manageable, easy to comprehend modules, and training is self-managed, allowing participants to learn as they go. To date, nearly 6,000 individuals have signed up for these CBT courses.

To implement the Section 111 reporting requirements, CMS developed a standardized electronic reporting process in 2009 that was based on a successful voluntary data sharing program established more than a decade ago. The reporting process was also designed to provide feedback to submitters regarding the quality of their reporting data. The goal in developing this reporting process was to ensure that data submitted was timely, accurate and complete, so that CMS would not have to follow-up with NGHP reporters for additional information it needed to properly coordinate benefits or resolve its potential recovery case. This electronic reporting process includes both an electronic file exchange process and a direct data entry option. The process also includes the ability to query for Medicare entitlement data so that the NGHP reporter can better determine whether it should report a particular settlement, judgment, award or other payment to CMS.

To date CMS has received files from more than 12,500 NGHP reporters and the overall number of MSP records posted to CMS' systems has more than doubled over the past three years, thus representing potential for even greater savings to the Medicare Trust Funds in the coming years. We continue to work closely with all parties affected by the Section 111 reporting requirement with the primary goal being to make coordination of benefits with Medicare as efficient and cost effective as possible for all involved.

Leveraging Technology to Improve the Process and Increase Rate of Return

CMS has taken significant steps to make Medicare information accessible to beneficiaries, their representatives, and the industry. We have expanded the MyMedicare.gov website to provide specific beneficiary information in a secure and readily accessible way. Through MyMedicare.gov, a beneficiary can access eligibility and enrollment information, learn about coverage options, review Medicare claims, and view MSP information. Beneficiaries are also able to access payment summary forms that Medicare issues with its conditional payment letters.

The MSP process is one tool CMS utilizes to safeguard taxpayer resources and improve program integrity for situations when Medicare pays a claim that should have instead been paid by a group health plan or other liable party. To maximize the efficiency of the MSP process, CMS has created mechanisms to securely exchange beneficiary data to ensure beneficiary claims are paid timely and to pursue recoveries when necessary. We have also developed mechanisms to automate many of the reporting and recovery processes. Thanks to these technological improvements, MSP activities have provided an average rate of return on recoveries of \$9.32 for each dollar spent since FY 2008, which is one of the highest returns of any CMS program integrity initiative. In FY 2010, the MSPRC program returned \$413 million to the Medicare Trust Funds. The MSPRC has been very successful in safeguarding taxpayer resources and improving the fiscal integrity of the Medicare program.

Conclusion

CMS is committed to a transparent MSP process that ensures that beneficiaries receive the care they need, while reducing Medicare payments for claims that are the legal responsibility of a group health plan, NGHP, or other responsible party. We understand that the MSP process can present challenges to all involved in coordination of benefits between Medicare and other payers. We are committed to maintaining a strong line of communication with beneficiaries, insurance and workers' compensation plans, and other stakeholders on MSP policy in general, as well as the new Section 111 reporting requirements. Additionally, we will look to expand and strengthen our training and education opportunities where possible.

CMS looks forward to working with our partners and beneficiaries in the future to preserve the integrity of the Medicare program and secure the Medicare Trust Funds for future generations. We look forward to working with Congress as well on these important goals.