

April 30, 2010

Volume 2: Number 3

Alert! MEDICARE SECTION 111 REPORTING UPDATES Alert!
Alert! MEDICARE LIEN MANAGEMENT UPDATE Alert!

In our effort to keep you current regarding developments in the Medicare Section 111 Mandatory Reporting process and implications on Medicare Secondary Payer requirements, we have prepared a brief overview summarizing some of the most recent comments and clarifications CMS has expressed.

CMS Clarifies Best Practices for Beneficiary Identification

Although initially CMS had indicated that RREs were not to simply submit queries on every potential claim to determine Medicare beneficiary status for reporting decisions, in a recent alert, CMS seems to have flip-flopped on this position and has indicated the most efficient way to make this determination is to submit a query rather than report the claim and then wait for a rejection with a disposition code of "51" or "55" indicating the individual is not in the CMS system. Query away! Still use caution that the information you submit for your query is accurate. If it is in error, the beneficiary might not show up and you could miss a reportable claim.

CMS Provides Statement Verifying Propriety of SSN/EIN/HICN Collection

In mid-April, CMS published a statement explaining the necessity and propriety of RREs (GHP and NGHP) collecting of SSN, HICN and EIN numbers for the reporting requirements. This statement can be found at:

<http://www.cms.gov/MandatoryInsRep/Downloads/RevisedCollectionSSNEINs.pdf>

You may want to use this statement to convince the recalcitrant claimant or attorney of the necessity and propriety of the information disclosure for reporting purposes. If the information is still not forthcoming, use the model SSN collection language from CMS for the claimant's confirmation of refusal to cooperate.

No Need to Update Claim Report With HICN

Where a production claim report is submitted with a SSN and the response file is returned as accepted but providing the RRE with the HICN for the beneficiary, there is no need to resubmit an updated report reflecting the HICN data field.

MSP Conditional Payment Notice (CPN)

A new procedure has been established in the MSP collection efforts on behalf of Medicare. The CPN will be the same as the present Conditional Payment Letter (CPL) with the exception that any response to it will be on a stringent timeline. It will be issued to the claimant in the event the MSPRC learns of a third-party claim after the Medicare beneficiary has been paid. This may occur where the MSPRC receives claims payment data through the MMSEA Sec. 111 reporting. After receipt of a CPN, the claimant must seek reduction for any procurement costs or unrelated charges within 30 days. Otherwise, the CPN amount will establish the CMS final demand.

MSP Does Not Apply to Medicare Advantage Plans or Part C Benefits

At a recent town hall meeting, the MSPRC confirmed that the MSP recovery rights do not extend to any payments associated with a Medicare Advantage Plan or with Medicare Part C benefits. Such benefits do not need to be considered in evaluating settlement values for purposes of protecting Medicare's right of reimbursement!

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Beneficiary Can Access Up to Date Conditional Payment Amounts On-Line!

A claimant is able to access timely information reflecting the amount Medicare claims it is entitled to for any primary payer under the MSP by registering on <http://www.mymedicare.gov> and clicking on the "MSP" tab. The same information is available to the claimant on-line, as will be reflected in the Claim Summary Form that the MSPRC will provide with a conditional payment letter, but will reflect the most recent payments by Medicare.

Challenge to MSP Collection Practices

A federal district court in Arizona has denied the federal government's effort to dismiss a class action suit by Medicare beneficiaries from across the country. The suit challenges the MSP collection practices as being in violation of the due process clause. The class action alleges that the MSP requires reimbursement of any conditional payments Medicare has made on behalf of a beneficiary within 60 days of the payment of settlement or judgment to the beneficiary without any hearing.

MSP Release Agreements

When evaluating settlement with a Medicare beneficiary, give consideration to requiring claimant's waiver and release of any rights they may have to an action against the

defendant or insurer for recovery under the MSP, 42 USC 1395y(b)(3)(A), or the False Claims Act, and requiring notice to the defendant or insurer of any perceived violation and cooperation to cure or avoid.

US Attorney Reiterates Consequences

Assistant U.S. Attorney Robert Trusiak from Buffalo, New York reiterated his view of the consequences of failing to protect Medicare's interest under the MSP in a letter to the Western New York Bar. See:

<http://www.lawjournalbuffalo.com/news/article/current/2010/03/25/102185/trusiak-state-courts-not-an-out-on-msp>

Failure to reimburse falls under the False Claims Act in his analysis and would constitute criminal fraud with treble damages and significant penalties per claim (he says each bill submitted for payment by Medicare would be a single claim under MSP). He also suggests that any reference to strategies in avoidance of reimbursement also would constitute a violation of the FCA.

Recent MSP Decisions

In New Jersey, plaintiffs were recently required to reimburse under MSP despite the settlement not releasing medical expenses. In another matter, a qui tam plaintiff was sanctioned for trying to bring an action under the MSP where the statute does not permit qui tam claims.

Closing Note

While we are hopeful this information is of use, it does not substitute for legal advice. We remain positioned to work with you toward your ultimate compliance.

Editor: Richard J. Joppich Office: (517) 381-7196 E-mail: richard.joppich@kitch.com



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