



Legal Bulletin



The Only Good Claim
Is A Settled Claim

November 18, 2009

Changes to Medicare Beneficiary Information and Conditional Payment Process

Recently, CMS promulgated new changes regarding the release of Medicare beneficiary information and the conditional payment lien process. These changes involve expansion of the role of the Medicare Secondary Payer Recovery Contractor (MSPRC) as well as the usage of certain required forms. The changes only became effective October 1, 2009. As such, guidance as to the usage of these new forms within the process has become paramount. A webinar by the MSPRC, which took place on November 12, 2009, attempted to clarify these procedures and usage of the forms, although attorneys representing beneficiaries were the target audience. The following is a synopsis of the current process for workers compensation, liability and no-fault carriers (Non-Group Health Plans).

The Coordination of Benefits Contractor (COBC) is the first point of contact and the focal point for the collection of all pertinent information as to the Medicare beneficiary. Their research and updates continue to provide the MSPRC with current information and are the basis by which the Conditional Payments Letter (CPL) is ultimately issued. Once the information is obtained, the Medicare Secondary Payer (MSP) Rights and Responsibilities Letter is generated by the MSPRC. It would appear that the COBC's role in the process has been relegated to one primarily of research.

Prior to October 1, 2009, a letter entitled the Right to Recovery Letter, was generated by the COBC. The MSP Rights and Responsibilities Letter replaces the Right to Recovery Letter. Included with the MSP Rights and Responsibilities Letter will be a correspondence cover sheet to be used when submitting correspondence to the MSPRC, an educational brochure and information as to the Privacy Act. This step then generates the "claim retrieval process" whereby the MSPRC performs a review of the information to determine what services are related to the date of accident or injuries. Within 65 days of the MSP Rights and Responsibilities Letter, the MSPRC will issue the CPL.

The recipient of the CPL can differ depending on whether or not any Consent to Release or Proof of Representation forms have been filed. If the Consent to Release form is filed, the authorized individual or entity can receive this letter but per the MSPRC cannot impart the knowledge to a subsequent entity or individual. Further, this form has been deemed by the MSPRC to be "a one way street" precluding the authorized individual or entity from interaction with the MSPRC regarding conditional payments. The Proof of Representation form would allow further interaction with the MSPRC including negotiations. If there are no forms filed, then only the beneficiary, workers compensation or no-fault carrier (if that information is known at the time) will receive the letter. Please note that liability carriers will not receive this information without either of the forms mentioned.



A third potential avenue regarding CPL information—as indicated in the MSPRC website—is authorization extended on the “insurer’s or workers compensation entity’s letterhead.” This provision is available to both no-fault insurers and workers’ compensation carriers. Issues regarding this method include whether a third party administrator can extend the authorization and the perimeters of that authorization. This provision refers to an agency-type relationship between the previously mentioned entities and the vendor (or authorized entity). Until the MSPRC’s position regarding manner and scope of authorization has been clarified, any authorization extended per this method should clearly define the scope of services of the Medicare Set-Aside (MSA) vendor. These services should include receipt of information and authorization to interact with the MSPRC as to negotiations and appeals of the CPL. Feedback from the MSPRC will be helpful in refining the perimeters, if necessary. Model language as to the Consent to Release and Proof of Representation forms have been provided but not mandated.

The MSPRC makes it clear that the CPL is only an interim amount and every 90 days this information will be updated. It should be noted that post October 1, 2009, the CPL will be automatically generated by the system and sent to the beneficiary and authorized individuals or entities. Again, receipt of these letters by entities or individuals other than the beneficiary are governed by the above discussion. However, the MSPRC has announced that no CPL will be automatically generated for cases reported prior to October 1, 2009. The MSPRC must be contacted.

The last step in the process involves the Final Demand Letter. Upon settlement, judgment or award made in the case the documents are forwarded to the MSPRC who then issues the Final Demand Letter. In determining the final amount, the MSPRC will take into account the procurement costs which will serve to lower this figure. The amount can still be challenged at this stage or waiver requested but interest begins to accrue. If the final demand amount is not paid within 60 days, the interest is assessed. The filing of an appeal does not stop the interest from accruing. The MSPRC will then issue an Intent to Refer Letter indicating the debt will be referred to the Department of the Treasury for collection. The referral will take place 60 days from the date of the Intent to Refer Letter. If payment is to be made, the check should be made payable to Medicare with the beneficiary’s name, Medicare number (HICN), and type of case. All necessary information should be provided for the MSPRC to identify this beneficiary.

The MSPRC has entertained questions from various sources as to clarification surrounding these changes. We expect further guidance in the near future as to the use of these forms and/or letters within the conditional payment process.

PMSI will continue to apprise you of any updates in this matter and look forward to being of service to you. For further information please contact PMSI Settlement Solutions at 888.MSA.PMSI or contactus@pmsisettlement.com.