

PUBLICATION

CMS Expands MSP Recovery Portal [Ober|Kaler]

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Earlier in 2013 the President signed into law the Strengthening Medicare and Repaying Taxpayers Act of 2012 (the "Smart Act") requiring CMS to establish a web portal for beneficiaries, their attorneys, and authorized insurance plans to access Medicare Secondary Payer (MSP) conditional payment information. On September 20, 2013, CMS released an [interim final rule that expands the functionality of the MSP Recovery Portal](#) under the Smart Act. The effective date of the rule and the last date for comments is November 19, 2013.

As explained in a previous [Payment Matters](#) article, health care providers who routinely treat Medicare beneficiaries injured from an accident or an employment injury often bill Medicare conditionally for the treatment. Medicare allows conditional payments when the provider does not have a reasonable expectation of payment within 120 days of service from a liability insurance plan, no fault insurance plan or workers' compensation plan. When Medicare makes a conditional payment, the primary policy or provider must negotiate with and reimburse Medicare for that conditional payment after the primary payer pays. The SMART Act attempts to make this process more efficient.

The interim final rule explained that access to claims information via the MSP Recovery Portal would vary depending on who will be using the portal. According to the rule, Medicare beneficiaries can provide claim information and receive Medicare conditional claims information on a per claim basis.

The access is different for beneficiaries and third parties (their attorneys, authorized applicable plans, and other beneficiary representatives) because CMS determined that federal privacy and security laws prevented CMS from fully disclosing information to these third parties. Third parties will need to preregister for the MSP Recovery Portal and provide proof of representation before accessing the beneficiary's information. Some of the data elements will be masked. If the third party would like to dispute claims on behalf of the beneficiary, then it will need to obtain and provide to the Medicare contractor either a conditional payment letter (before January 1, 2016) or be authenticated with a multifactor authenticator process (after January 1, 2016) that should be available shortly.

The interim final rule also provides the following claim information timeline.

1. The beneficiary (or the beneficiary's third party) begins the process by notifying the Medicare contractor of any pending liability insurance plan, no-fault insurance plan or workers' compensation plan settlement, judgment, award or other payment.
2. The Medicare contractor will provide an initial compilation of claims on the MSP Recovery Portal within 65 days. Medicare can take an additional 30 days under exceptional circumstances or if the contractor reviewing the claims needs to manually adjust its claims filters.
3. The beneficiary (or the beneficiary's third party) notifies Medicare as early as 120 days before the expected date of settlement, judgment, award or other payment to obtain the amount that will be owed to Medicare to repay the conditional payment.
4. The beneficiary (or the beneficiary's third party) may dispute an individual claim only once. The interim final regulations state that CMS will resolve all disputes within eleven (11) business days. CMS' comments also reasserted that there is no appeal right of a claim dispute. An appeal right is available after CMS issues a final payment demand.

5. The beneficiary (or the beneficiary's third party) may refresh claims data anytime after the start of 120 day period.
6. The beneficiary (or the beneficiary's third party) should download CMS' final conditional payment amount 3 days before settlement.
7. The beneficiary (or the beneficiary's third party) will be required to submit the final settlement information via the MSP Recovery Portal within 30 days. CMS will issue a final demand letter after it receives this information. If settlement information is not received within 90 days, the conditional payment amount obtained prior to settlement is void. The interim final rule does not provide a procedure to renegotiate a new conditional payment amount using the MSP Recovery Portal; however, Medicare will still seek repayment for the conditional payments.

Ober|Kaler's Comments

The interim final rule is the next step in establishing a streamlined Medicare Secondary Payer system. Interested stakeholders are encouraged to submit comments by 5 pm on November 19, 2013. Although this is the effective date of the interim final rule, many of the rule's provisions will not occur until January 2015 or January 2016.

Stakeholders should also be aware that the MSP Recovery Portal will have administrative and technical access limitations while it is developing the multifactor authenticator process. The process should be completed by mid-February of 2015 and fully operational by January 1, 2016.