NAVIGATING THE MAZE

Cheri Benander, MSN, RN, CHC, NHCE-E
Health Services Consultant, HealthTechS3

Should we care about MSP?

MSP or Medicare Secondary Payer refers to benefits provided to a beneficiary when Medicare is not the primary insurance. According to CMS, when Medicare began, they were the primary payer except when Worker's Compensation, Veteran Administration, or Black Lung Benefits were involved. However, in 1980, legislation was passed making Medicare the secondary payer and shifting costs to private sources when appropriate.[1] Group and Non-Group Health Plans are two categories of insurance in which the Medicare Secondary Payer provisions apply.

Group Health Plans (GHPs)

CMS defines Group Health Plans (GHPs) to include self-insured plans, plans of government entities and employee organization plans (union, employee health and welfare plans and other employee organization plans). Those individuals under a GHP who are affected by the MSP are the working aged, disabled individuals and individuals with end stage renal disease. [2] The GHP is required to provide the same coverage to their Medicare beneficiaries as they do to their non-Medicare beneficiaries. Medicare then becomes the secondary payer and may make a secondary payment or may pay for services not covered by the plan is they are Medicare covered services.[3]

Non-Group Health Plans (NGHPs)

These include liability and no-fault insurers, and worker's compensation funds.[4] This would include beneficiaries who are injured in an auto accident, on someone's property or at work where liability insurance would be considered primary.

Who Governs?

Federal law governs Medicare and the Medicare Secondary Payer however; most NGHPs are governed by State law. The GHPs are typically governed by State Law or the Employee Retirement and Income Security Act (ERISA) and that law requires Group Health Plans to comply with the MSP laws. So things can get rather confusing but if there is a conflict between Federal and State law, the Federal law takes precedence.[5] CMS indicates that even if the insurance policy or insurance plan "...has a provision that conflicts with Federal law, Federal law must be followed."[6]

To reduce the confusion and help primary payers and providers to determine which plan is primary, CMS established a Coordination of Benefits system. This system helps plans to determine what their payment responsibilities are. This process;

- Ensures that claims are paid correctly, identifies the health benefits available, coordinates the payment process and ensures that the primary payer pays the claim first
- Shares Medicare eligibility data with other payers and transmits Medicare-paid claims to supplemental insurers for secondary payment
- Ensures that the amount paid by plans in dual coverage situations does not exceed 100%
- Accommodates the coordination needs of the Part D benefit [7]

Under certain circumstances, Medicare will make a conditional payment when the primary payer is delayed in making payments. Medicare will then pursue reimbursement of the conditional payment from:

- A beneficiary or other party, if both a primary and conditional payment were received
- A primary payer, if a conditional payment was made pursuant to liability insurance settlements, disputed claims under group health plans, workers' compensation plans, or no-fault insurance; and
- The beneficiary or provider, if the filing of an improper claim resulted in a conditional payment, unless the claim was a result of false information provided by the beneficiary and the provider complied with certain regulatory procedures.[8]

As providers, we have certain responsibilities under the MSP. Institutional providers (Part A) such as hospitals are required to obtain billing information prior to providing hospital services (not to be confused with the EMTALA rules). Part A providers are required to submit any MSP information to the

intermediary using condition and occurrence codes on the claim.[9] For those who are Part B providers, they will need to obtain billing information at the time the service is rendered and then submit an Explanation of Benefits (EOB) form with all the appropriate MSP information to the designated carrier. [10]

Failure to have some type of system or process to identify other payers is considered a violation of the Medicare provider agreement. To be safe, it is recommended that you use the CMS Questionnaire that is available at https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/ProviderServices/Downloads/CMS-Questionnaire.pdf

There are six parts to the form and it contains questions to ask Medicare beneficiaries during each inpatient or outpatient admission. Circumstances may change so it is important that these questions be asked each time a Medicare patient presents. If an improper claim is submitted and a conditional payment is received, the provider must reimburse Medicare within 60 days otherwise the provider may be subject to civil monetary penalties.[10]

Providers need to be aware of the rules surrounding MSP and the potential repercussions for not being compliant. CMS also has an excellent tool, a Medicare Leaning Network (MLN) Booklet that explains Medicare Secondary Payer. The booklet is available at https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/ProviderServices/Downloads/CMS-Questionnaire.pdf . Herschman, Jampol and Potter-Strait also provide some practical recommendations in a *Compliance Today* article that will help providers avoid liability:[11]

- Implement adequate controls when submitting reimbursement claims to Medicare and Medicaid to ensure correct payer status.
- Actively investigate each patient's health care coverage to determine if the patient carries a primary policy or if another party is responsible, prior to submitting a claim for reimbursement.
- Reassess the patient's primary payer coverage at each encounter.
- Conduct random internal billing audits to ensure MSP compliance.
- Educate any case management/billing staff on the MSP and potential liability issues.

There are educational resources available including the Medicare Secondary Payer Act, the Medicare Secondary Payer (MSP) Manual and the CMS Website. Regardless of the tool that you use, makes sure your organization has the proper processes in place and staff are trained appropriately to ensure compliance and avoid potential False Claims Act liability.

[1]Medicare Secondary Payer- https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Coordination-of-Benefits-and-Recovery-Overview/Medicare-Secondary-Payer/Medicare-Secondary-Payer.html

[2] CMS MSP Overview- Slide 9. Available at https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Coordination-of-Benefits-and-Recovery-Overview/Medicare-Secondary-Payer/Downloads/MSP-Overview.pdf

[3] Idem at #8

[4] Idem at #10

[5] Indem at #13

[6] Indem at #13

[7] Coordination of Benefits. Available at https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Coordination-of-Benefits-and-Recovery-Overview/Coordination-of-Benefits/Coordination-of-Benefits.html

[8] Herschman, G., Jampol, M. & Potter-Strait, T. (2008 March), Navigating Medicare Secondary Payer compliance and False Claims Act Liability. *Compliance Today*

[9] CMS- Your Billing Responsibilities. Available at https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/ProviderServices/Your-Billing-Responsibilities.html

[10] Ibid #8

[11] Ibid #8

For more information, please contact Cheri Benander:
Cell: 307-202-0315
Main: 615-309-7421
cheri.benander@healthtechs3.com
5110 Maryland Way, Suite 200 | Brentwood, TN 37027
www.healthtechs3.com

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