

Medicare as the Secondary Payer

Congress established the Medicare program in 1965 to pay medical expenses for the elderly, disabled, and people suffering from end-stage renal disease. Initially, Medicare paid essentially all expenses for eligible participants (beneficiaries). However, in 1980, Congress created the Medicare Secondary Payer Statute (MSP) to reduce spending and preserve the fiscal integrity of the Medicare program.

Under the MSP as it exists today, medical benefits are available for qualified individuals. However, if a Medicare beneficiary's injury or illness is the responsibility of a third party, Medicare is no longer required to pay for treatment. The theory is to shift the cost back to the responsible party. The MSP specifically provides that Medicare may not make payment on behalf of a beneficiary if, "payment has been made or can reasonably be expected to be made under a workmen's compensation law or plan... or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance." As a result, Medicare will look to one of these designated plans or policies as the "primary" payer for all injury — or illness-related medical expenses.

CMS Initiative

The Centers for Medicare and Medicaid Services (CMS), the federal agency that administers Medicare, has undertaken a comprehensive effort to recover past payments it made conditioned on reimbursement by the primary payer and to prevent the shifting of future medical expenses from the primary payer to Medicare. Through a series of policy memorandums, CMS provides guidance regarding when and how to consider Medicare's interests and comply with the MSP.

If Medicare made past payments subject to reimbursement by the primary payer (conditional payments), these payments must be resolved at the time of settlement. Conditional payment resolution involves identifying and investigating conditional payment claims and initiating a formal review or appeal when claims are felt to be inappropriate.

If a primary payer is settling future medical benefits for a claimant meeting established criteria, a CMS approved Medicare Set-Aside (MSA) Arrangement is the recommended method of considering Medicare's interests. The primary components of an MSA Arrangement are the MSA allocation amount, the method of funding the MSA account and the method of administering the MSA account. Each of these components must be carefully addressed and supported with appropriate documentation.

One Source Compliance Solutions

Failure to comply with the MSP and consider Medicare's interests can result in significant negative consequences for all involved parties. The employer or carrier may have exposure for double damages and case re-opening. The claimant may lose Medicare benefits for injury related care or have future Social Security benefits offset. The attorney may have malpractice exposure.

NuQuest/Bridge Pointe is a true one source industry leader in all aspects of Medicare Secondary Payer Compliance. Our expert team of registered nurses, workers' compensation, liability claims adjusters and professional administrators are ready to work with you to ensure MSP compliance requirements are met and potential negative consequences are avoided.