

# **COB Fact Sheets: MSP Laws and Third Party Payers**

## **Fact Sheet for Attorneys**

The purposes of the Medicare Coordination of Benefits (COB) program are to identify the health benefits available to a Medicare beneficiary and to coordinate the payment process to prevent mistaken payment of Medicare benefits. The COB Contractor (COBC) collects, manages, and reports other insurance coverage. The COBC must be notified of situations where medical services rendered to a beneficiary are related to a workers' compensation injury, automobile accident, or other liability because in these instances, another payer has the primary responsibility for payment of medical claims related to the injury. Both you and your client have significant responsibilities and obligations under the Medicare Secondary Payer (MSP) laws to report these situations, and your participation is vital in ensuring the integrity of the Medicare Trust Funds.

### **MSP Laws and Third Party Payers**

MSP laws are applicable to situations where a beneficiary may file a claim and/or a civil action against a third party seeking damages for injuries received and medical expenses incurred as a result of that illness/injury. Per 42 U.S.C. 1395y(b) (2) and 1862 (b) (2)(A)(ii) of the Act, Medicare is precluded from paying for a beneficiary's medical expenses when payment "has been made or can reasonably be expected to be made under a workers' compensation (WC) plan, an automobile or liability insurance policy or plan (including a self-insured plan), or under no-fault insurance."

Medicare may pay for a beneficiary's covered medical expenses conditioned on reimbursement to Medicare from proceeds received pursuant to a third party liability settlement, award, judgement, or recovery. In these instances, a pro rata share of procurement costs reduces Medicare's reimbursement. This conditional payment is made if it is determined that the liability or no-fault insurer will not pay "promptly." Implementing regulations of the Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration, establish that "promptly" means 120 days from (1) the date a claim is filed with an insurer or a lien is filed against a potential liability settlement or (2) the date the service was furnished or the date of a hospital discharge. See 42 C.F.R. §411.50(b).

If an MSP liability situation is identified after the Medicare claim is paid primary, the beneficiary may be required to reimburse Medicare. The claim may be reprocessed or adjusted to reflect Medicare as the secondary payer.

It is in your client's best interest to keep Medicare's claims interest in mind during the negotiation and settlement process with the third party. Medicare's claim must be paid up front out of settlement proceeds before any distribution occurs. Moreover, Medicare must be paid within 60 days of receipt of proceeds from the third party. If Medicare is not repaid in a timely manner, interest may be assessed.

## **Notifying Medicare of Other Insurance**

Medicare must be notified when the possibility exists that another insurer may have the responsibility of primary payer for your client's health care costs. All MSP inquiries including the reporting of potential MSP situations, invalid insurance information, and general MSP questions/concerns should be directed to the COBC's office. Use our toll-free lines: 1-800-999-1118 or TTY/TDD: 1-800-318-8782 for the hearing and speech impaired. Customer Service Representatives are available to assist you from 8 a.m. to 8 p.m., Monday through Friday, Eastern Time, except holidays. Written correspondence should be addressed to: Medicare-COB, MSP Claims Investigation Project, P.O. Box 5041, New York, New York 10274-5041.

When contacting the COBC, please provide the following:

- Your client's name
- Your client's Medicare Health Insurance Claim Number (HICN) or Social Security number (SSN)
- Date of accident/incident
- Description of illness/injury
- Name and address of the other insurance (e.g., workers' compensation carrier, auto/no-fault insurance carrier, etc.)
- Name and address of legal representative
- Name of insured
- Policy/Claim Number

The above information will provide the COBC with the information necessary to expedite the MSP Claims Investigation process. Upon receipt of this information, the COBC will apply it to your client's Medicare record, assign the case to a Medicare contractor, and inform you and your client of the applicability of the MSP program and Medicare's recovery rights. You will receive a notice advising you of the Medicare contractor assigned to handle the specifics of the case to recovery (i.e., the lead contractor), Medicare's right of recovery, and a beneficiary consent to release form. The consent form and any case related documents should be returned to the lead contractor identified.

Once this process is complete, all further inquiries are made through the lead contractor.

In order to gather Medicare's claim payment summary, the lead contractor canvasses, as necessary, with other Medicare contractors to identify claims they have paid for your client. This process requires adequate time for the Medicare contractors to search their claims history and respond to the inquiry. Therefore, the sooner you notify Medicare of the incident, the faster Medicare can serve you and your client. Medicare's interest cannot be determined until the beneficiary's record has been annotated with the specifics of the case.

## **Notifying Medicare of a Settlement**

If a settlement has already been reached, the following information must be provided to the lead contractor:

1. Authorization from your client to release Medicare specific paid claims data. If you do not have a release on file, a release form can be obtained from the COBC. Both you and your client must sign the release form. Please note that a release must be returned even if a settlement has not been reached.
2. A copy of the settlement agreement indicating the settlement date and total amount of the award.
3. An itemized statement of attorney fees and procurement costs.
4. The name, address, and telephone number of the automobile or liability insurer involved, and if available, the policy number, claim number, and adjuster's name.
5. If monies are available through personal injury/med-pay or another form of coverage, indicate the total coverage amount and an itemization of benefits paid.

### **Visit the COBC Web Site**

For more information about the COBC and the MSP Claims Investigation Project, visit our Web site at <http://cms.hhs.gov/medicare/cob>.