

Lien on Me: Addressing Centers for Medicare & Medicaid Services Liens

Medicare Conditional Payments

- Types of Medicare Conditional Payment Liens
 - Traditional Medicare Parts A and B
 - Medicare Advantage Plans (Medicare Part C)
 - Prescription Drug Plans (Medicare Part D)

Medicare Parts A and B

Medicare Conditional Payment Recovery Contractors

- Commercial Repayment Center (CRC)
 - Pursue recovery directly from the WC Carrier (RRE)
 - Accepted claims – during acceptance
- Benefits Coordination & Recovery Center (BCRC)
 - Pursue recovery from the Beneficiary directly
 - Denied claims
 - After settlement

What triggers Conditional Payments?

- Section 111 Reporting
 - ORM (Ongoing Responsibility for Medicals)
 - The trigger for reporting ORM (Ongoing Responsibility for Medicals) is the RREs assumption of a responsibility to make medical payments.
 - CRC Recovery Case
 - TPOC (Total Payment Obligation to Claimant)
 - Settlement inclusive of Medicals
 - BCRC Recovery Case

Medicare Conditional Payments

- When to request?
 - As soon as possible
 - Ensure Section 111 Reporting is complete and particular
 - Denied claim – Self-Report prior to settlement
- What forms might you need?
 - Consent to Release
 - Proof of Representation
 - HIPAA Authorization
 - Letter of Authority
 - Final Settlement Detail Document
 - Clarification of which plans Claimant is (or has) been enrolled in.

Part A/B Medicare Liens

- CRC vs. BCRC
 - CRC— handles ORM claims
 - Carrier is named as the debtor of record
 - Liens should be triggered by ORM Section 111 reporting
 - BCRC— handles denied claims and recovery after settlement
 - Beneficiary is named as the debtor of record
 - Self-Report

Process for Part A/B Medicare Liens

- Report claim (Section 111 or self-report)
- Conditional Payment Letter
- Conditional Payment Notice
 - File Dispute
- Initial Determination (formally Final Demand)
 - File Appeal
- Redetermination Decision
- Payment
- Lien Satisfaction Letter/Full Payment Received Letter

Things to Remember in Recovery

- The CRC can open and recover conditional payments through numerous recovery cases throughout the period the claim is accepted (ORM)
- The BCRC will recover upon settlement of a claim
 - Denied Claims
 - Any conditional payments that were not identified by the CRC during acceptance of the claim (ORM period)

Challenges with Part A/B Medicare Liens

- ICD-10 and ICD-9 codes reported
- Appeal/dispute unrelated charges
- Ignoring time frames/correspondence
- What are dispute/redetermination rights?
 - Dispute versus Redetermination
 - BCRC additional options – waiver, hardship, compromise
- Who is the Identified Debtor
 - Additional authorization necessary if Claimant is debtor
- If conditional payments are not reimbursed?
 - 3 year SOL
 - What constitutes notice?
 - Who will Medicare sue?
 - Double damages
 - Penalties and interest

MSPRP

Medicare Secondary Payer Recovery Portal

- Report Denied Claims
- Conditional Payment Status
- Letter Activity available – shows you the date the letter was sent and/or the date that the letter was received by them (i.e. – appeals/disputes/settlement documents/authorizations)
- Refund Tab – provides that date and amount of the refund that was sent as well as the payee
- Electronic Payments

Interplay between Section 111 and Conditional Payments

- Section 111 data is the key to ensuring consistency in conditional payment resolution
- Incomplete or inaccurate data may be used for basis of civil monetary penalties
- Impact on beneficiaries
- Impact on WC Carriers
- Recovery Agent
- Incorrect ICD Codes
- Incorrect dates
- Incorrect ORM information
- Incorrect settlement (TPOC) amount

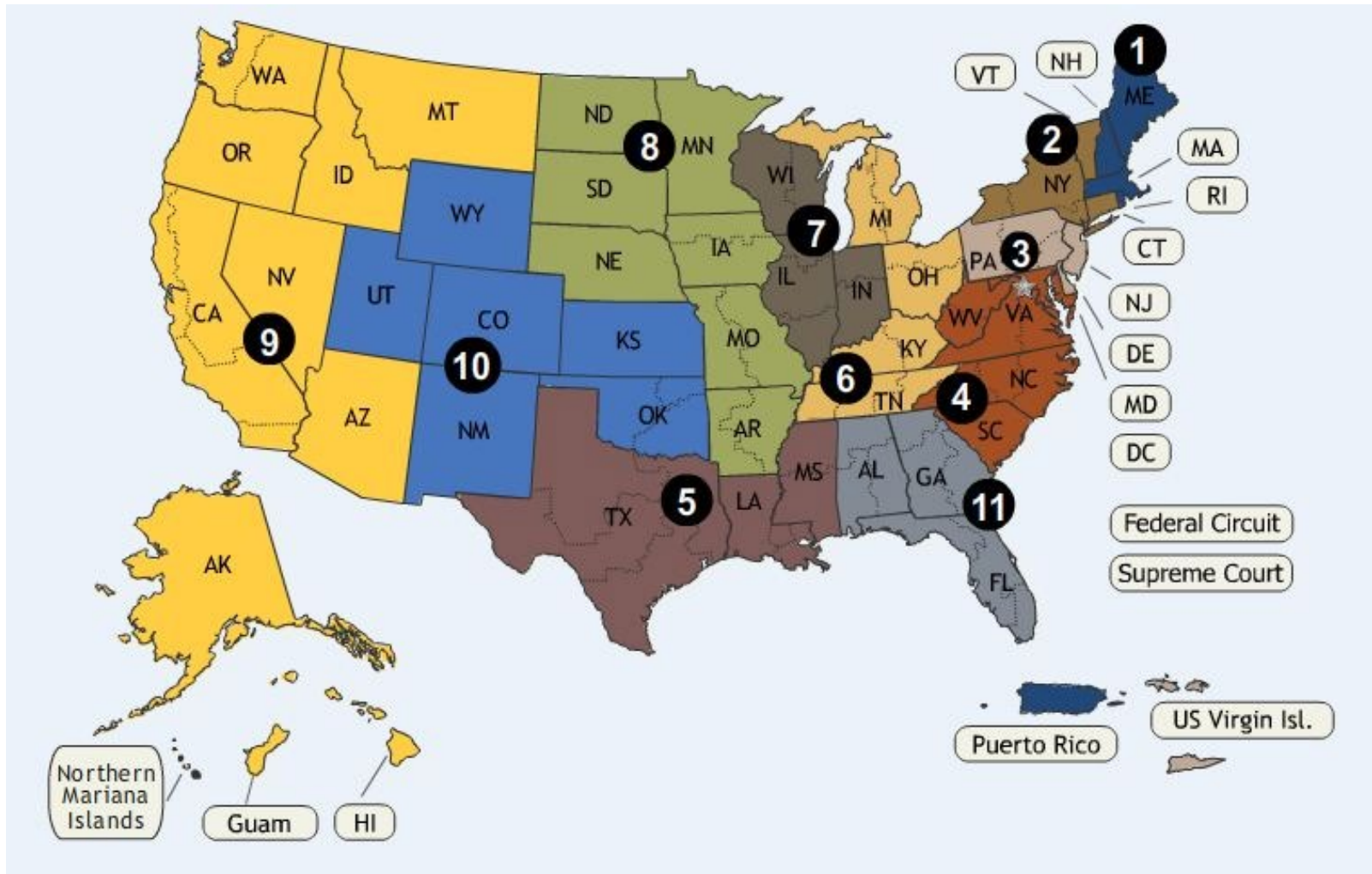
Impact of Inaccurate Data – Conditional Payments

- Section 111 data has direct impact in all areas of the conditional payment process
- ICD coding presented to CMS in a Section 111 submission will be used for recovery
- ORM status and termination date
- ORM reported in denied claims
- Address information submitted in TIN file for RRE address or recovery agent address may delay or prevent recovery if not accurate

Medicare Advantage Plans - Medicare Part C Medicare Part D

Medicare Advantage Plans (Part C) / Medicare Part D Plans

- The “other” Medicare liens
- How do they apply to the MSP?
- What rights do they have?
 - Current circuit court treatment
 - 3rd, 4th, 5th, 6th, 8th and 11th



Medicare Advantage Plans (Part C) / Medicare Part D Plans

Humana Medical Plan and Humana Insurance Company v. GlaxoSmithKline, LLC (In re: Avandia Marketing)

- On June 28, 2012, the 3rd Circuit decided that the plain text of the Medicare Secondary Payer Act (MSP) provisions under 42 U.S.C. §1395y(b)(3)(A) established a private cause of action for Medicare Advantage Plans (MAP) against primary payers.
- The court held that the MSP and the private cause of action provisions did not attach exclusionary language to the phrase “payments made under this subchapter,” and therefore it should be read to include Part C, as well as Parts A and B.
- The court also found that the MSP provision regarding recovery rights swept broadly enough to provide MAOs the same right to recovery as the Medicare Trust Fund.

Medicare Advantage Plans (Part C) / Medicare Part D Plans

In Humana Medical Plan, Inc. v. Western Heritage Insurance Co. (S.D. Fl. 2016), the 11th Circuit affirmed the District Court's decision, in accord with the Third Circuit's determination in *In re: Avandia* that a Medicare Advantage Organization (MAO) (i.e. a Medicare Advantage Plan) has the same rights of conditional payment reimbursement as Original Medicare Parts A and B. Accordingly, if you are litigating or settling a claim in the 11th Circuit (Florida, Alabama and Georgia) and the injured party is a Medicare beneficiary, it is imperative that you not only ensure that any traditional Medicare liens are satisfied (Medicare Part A and B), but the parties should also investigate what type of Medicare plan the injured party is enrolled in throughout the life of the claim.

PAID Act

Provide Accurate Information Directly Act – effective 12/11/21

- CMS returning Medicare Part C/D plan information on Section 111 monthly query response file (up to 3 years)
 - Plan name
 - Enrollment and Termination dates
 - Plan Contract Address
 - COB contact address and generally not the same as the recovery address

Requesting Part C/D Lien

- Determine plans in which Claimant has been enrolled since DOI
 - Questionnaire
 - PAID Act information
 - Obtain HIPAA authorization signed by Claimant
 - Send request stating nature of the accepted injury
 - Include Plan/Member ID and/or Claimant SSN & DOB
- *No central organization or portal to utilize to obtain statements

Obstacles in Obtaining C/D Lien Statements

- Attaining all Part C/D Plans from the date of entitlement and/or date of injury
- Obtaining appropriate subrogation contact information
- Not all Plans have departments to respond to requests
 - Plans were not prepared for the influx of requests due to PAID Act information

What is on the Horizon for Medicare Part C/D Conditional Payments?

- MAP Recovery Expanding
 - Receiving information directly from CMS
- Double Damages
- Private Cause of Action SOL – 3 or 4 years?
 - 11th Circuit Decision – MSPA Claims 1, LLC v. Tower Hill Prime Insurance Co.
- Part D plans becoming more aggressive

Thank You!!

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