

RUSSELL, WAGG, GABBERT & BUDZINSKI

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

510 L STREET, SUITE 300
ANCHORAGE, ALASKA 99501-1952
TELEPHONE (907) 258-1747
FACSIMILE (907) 258-5546

RICHARD L. WAGG
ROBIN JAGER GABBERT
MICHAEL A. BUDZINSKI
DAVID D. FLOERCHINGER
JOSEPH M. COOPER
ROBERT J. BREDESEN
MICHELLE M. MESHKE

MERRILEE S. HARRELL
ERIN K. EGAN
VICKI A. PADDOCK

OF COUNSEL
KAREN L. RUSSELL
DONALD W. EDWARDS
ELIZABETH D. GOUDREAU

Alaska Bar Association - Workers' Compensation Section Meeting
Medicare Update by Merrilee Harrell
January 4, 2013

New Developments

HR 1845 - Medicare Intravenous Immune Globulin Access
+SMART Act (Saving Medicare and Repaying Taxpayers)
(passed House/Senate; presented to President 12/31)

Amends 42 USC 1395y(b)(2)(B):

Conditional Payments Reports

Notice: No more than 120 days before expected date of "settlement, judgment, award, or other payment (SJAOP)," either party may notify CMS of expected SJAOP.

Party may request conditional payment info; CMS has 65 days to respond to request for conditional payment info made no earlier than the notice date above (CMS can extend their deadline for 30 days if needed to respond)

Web-based portal established to access conditional payment info; supposedly up-to-date within 15 days after payment has been made to provider.

Resolution of Discrepancies in Conditional Payment Statement

"Individual or Representative" to provide documentation explaining discrepancy and proposal to resolve discrepancy

- CMS has 11 days to respond to such documentation
- if no determination by CMS within 11 days, proposal to resolve shall be accepted
- if CMS determines no reasonable basis to remove items, proposal shall be rejected
- if CMS determines reasonable basis, it must timely respond that it agrees, or provide alternate discrepancy resolution

No appeals process for above. CMS determination is final. "there shall be no administrative or judicial review of the Secretary's determinations under this subclause."

Protected Period

That portion of the period: No earlier than the notice date re SJAOP that is after the end of CMS response period.

If repayment is made based on conditional payment info downloaded during the protected period and within 3 business days before date of SJAOP is final amount subject to recovery

Appeals Process

CMS shall promulgate regs establishing appeals process "with respect to any determination made under this subsection for a payment made under this title for an item or service for which [CMS] is seeking to recover conditional payments from an applicable plan...under which the plan may appeal such determination..."

New Exceptions/Limitations

Conditional payment recovery and mandatory reporting do not apply to cases where total payment obligation is less than an as-yet-to-be-specified threshold amount. (Starting 2014)

The civil monetary penalty for failing to report (\$1,000 per day per claimant) is amended from "shall" to "may," and CMS is tasked with coming up with guidelines for implementing what now appear to be discretionary sanctions.

Statute of Limitation - CMS must seek recovery within 3 years of the date of notice of SJAOP via mandatory reporting. [Effective date: six months from enactment.]

Conditional Payments Portal

Available to

- Individuals (beneficiaries)
- authorized family or other representatives recognized under regulations
- applicable plan with consent of the individual

Provides only total amount, no details about DOS, provider, etc.

Can only be accessed once you have Case ID/ReMas#, which you can only get from "Rights and Responsibilities" letter or "Conditional Payments" letter.

- - one of these letters may already have been generated due to MIR
- - if not, provide notice to COBC, which will generate detailed CPL ~65-95 days
- - Useful once you have Case ID # for checking to see current total amount

Portal can be used to report final settlement, which will trigger final demand letter.

Can dispute CPL via portal, but once final demand is issued, you would "appeal" rather than dispute; appeal can not be done through portal.

Protocols Follow-up

Fully funded MSA v. Compromise MSA

- CMS reviews only "commutation" or zero MSA proposals
- based on an interpretation of 42 CFR 411.47 that is not accepted by CMS