

Carr Allison Medicare Compliance Group

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July 2015 News and Alerts

Visit us at Booth #20



July 22-24, 2015
Disney's Grand Californian Hotel® & Spa

We look forward to seeing you again this year at the 13th Annual CCWC Legislative & Educational Forum. Stop by our booth and register for your chance to win a \$100 Visa Gift Card!

Melisa Zwilling Set to Speak at the National Workers' Comp Conference in November

Ms. Zwilling will be presenting at the 24th Annual National Workers' Compensation and Disability Conference® in Las Vegas, November 11 - 13.



We are inviting you to join us there and be a part of the nation's leading training event for workers' comp and disability management professionals.

The organizers have given us a special discount to offer you – **\$100.00 off the going rate. To attend at this special discount, just register by Nov. 9 with Promo Code SPKR15.**

Be sure to attend Melisa's session on *MSAs: Getting Them Right to Lower Settlement Costs, Thursday Nov. 12 from 3:30-4:45pm.*

Also stop by **Booth #1025** in the exhibit hall and **register for your chance to win a \$100 Visa Gift Card!**

CMS Announces Transition of NGHP Recovery to Commercial Repayment Center

Currently, Medicare's Benefits Coordination and Recovery Center (BCRC) handles the recovery of conditional payment claims in

workers' compensation, liability, and no-fault cases, and the Commercial Repayment Center (CRC) handles the primary portion of the recovery of Medicare payments from group health plans. CMS recently announced that beginning in October 2015, the CRC will start handling the recovery process in workers' compensation, liability, and no-fault cases when CMS is pursuing reimbursement directly from the primary payer. The BCRC will no longer handle the recovery of claims from the primary payer but will continue handling the recovery process when CMS is pursuing reimbursement from the beneficiary.

CMS indicated that in the coming months they will schedule webinars and town hall telephone conferences to discuss the transition process. We will let you know when we receive notice from CMS that any webinars and telephone conferences are scheduled.

CMS also announced that beginning January 1, 2016, "where an insurer or workers' compensation entity has reported to CMS that it has ongoing responsibility for medicals (ORM) for specific care, CMS' claims processing contractors will use the information provided by the insurer or workers' compensation entity to determine whether Medicare is able to make payment for those claims." CMS reiterated the importance of RREs reporting accurate ICD-9 and ICD-10 codes to ensure that Medicare issues payments appropriately. Under the current language of the CMS NGHP Section 111 User Guide, RREs are required to start reporting ICD-10 codes for claims with a CMS date of injury on or after October 1, 2015.

For more information, please visit [CMS here](#).

Eleventh Circuit District Court Dismisses MAO Private Cause of Action

Medicare Advantage Organizations (MAOs) right to recovery under the private cause of action provision of the Medicare Secondary Payer Act (MSP) continues to be a hot issue in court decisions as more and more Plans seek recovery under this provision.

As you may recall, *a private cause of action exists under the Medicare Secondary Payer (MSP) Act when a primary plan fails to pay for Medicare's conditional payment*. Additionally, the private cause of action allows for double damages. See 42 USC §1395y(b)(3)(A). While decisions on this issue continue to fall both ways, currently the Third, Fifth and Eleventh circuits are allowing MAOs a right to recovery under this provision. The provision further requires that a primary plan's responsibility be demonstrated "by a judgment, a payment conditioned upon the recipient's compromise, waiver, or release (whether or not there is a determination or admission of liability) of payment for items or services included in a claim against the primary plan or the primary plan's insured, or by other means." 42 U.S.C. § 1395y(b)(2)(B)(ii).

The issue of demonstrating responsibility was recently addressed in *MSP Recovery, LLC v. Progressive Select Insurance Company*, 2015 U.S. Dist. LEXIS 47784 (11th Cir. April 1, 2015). In the case at issue, a Medicare beneficiary held coverage through a Medicare Advantage Plan (MAP) when he was injured in a car accident. The medical bills related to the accident should have been paid through his PIP coverage with Progressive, the Defendant in this case. The Defendant, however, did not immediately pay the related bills. As such, those bills were covered by the MAO. MSP Recovery, LLC, Plaintiff, through assignment by the MAO, filed for recovery against the Defendant's PIP coverage due to the Defendant's failure to provide reimbursement. Although the Court followed the Third Circuit's holding in *In re Advandia*, and found that the MAO did in fact have a private cause of action under the MSP, the Plaintiff's claim was eventually dismissed for failure to demonstrate responsibility to reimburse. We will continue to monitor all upcoming decisions for discussions on this issue.

Rule on Section 111 Penalties Not Expected until December 2016

Under the SMART Act, CMS is supposed to issues rules specifying "practices for which sanctions will and will not be imposed." In December, 2013, CMS issued an Advanced Notice of Proposed Rulemaking seeking comments on circumstances in

which penalties should and should not be imposed. The comment period closed in February, 2014 and since then the industry has been awaiting proposed rules from CMS. After CMS issues proposed rules, the public will be allowed to submit comments during a 60 day period, and then CMS will issue final rules.

Previously, CMS had indicated that they would issue proposed rules in July, 2015. However, CMS has now indicated that they will not be issued until December, 2016. Of course, it is possible that this time frame will change again and that CMS will issue proposed rules at a later date. We will continue to keep you updated and let you know once any proposed and final rules are issued. Until they are, RREs should focus on ensuring that they are reporting under Section 111 correctly and not be overly consumed with fear of retribution from CMS.

If you have questions or would like an audit of your Section 111 reporting program and processes, [contact us](#).

Additional Updates:

- [Case Study: Are Unnecessarily High MSAs Driving your Settlement out of Range?](#)

- [IMRs in California Accepted by CMS in Carr Allison MSA Allocations](#)

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