
CMCS Informational Bulletin

DATE: November 14, 2019

FROM: Calder Lynch, Acting Deputy Administrator and Director
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SUBJECT: Further Guidance to Medicaid Bipartisan Budget Act (BBA) of 2018 and changes to Medicaid Provisions Passed in April 2019 – Third Party Liability in Medicaid and CHIP

On February 9, 2018, President Trump signed the Bipartisan Budget Act of 2018 (Pub. L. 115-123) into law. This new law includes several provisions which modify third party liability (TPL) rules related to special treatment of certain types of care and payment. The intent of this Informational Bulletin is to further clarify CMS guidance issued in our June 2018 Bulletin on key provisions related to third party liability in Medicaid and CHIP. This guidance also addresses the April 2019 changes to the Bipartisan Budget Act of 2013, which allows for payment up to 100 days instead of 90 days after a claim is submitted for claims related to medical support enforcement.

Background:

Under the law, Medicaid is generally the “payer of last resort,” meaning that Medicaid only pays for covered care and services if there are no other sources of payment available. Section 1902(a)(25) of the Social Security Act (the Act) requires that states take “all reasonable measures to ascertain the legal liability of third parties.” The Act further defines third party payers to include, among others, health insurers, managed care organizations (MCOs), and group health plans, as well as any other parties that are legally responsible by statute, contract, or agreement to pay for care and services. The regulations mirror this definition of third parties at 42 CFR 433.136.

In June 2018, CMS released an Informational Bulletin to provide technical assistance on the key TPL provisions related to the BBA of 2018 that impact Medicaid and CHIP. For reference, the link is provided here: <https://www.medicare.gov/federal-policy-guidance/downloads/cib060118.pdf>

This bulletin updates the June 2018 guidance.

BIPARTISAN BUDGET ACT OF 2018, SECTION 53102, THIRD PARTY LIABILITY IN MEDICAID AND CHIP:

Removing Special Treatment of Certain Types of Care:

There are certain circumstances under which a State Medicaid Agency (SMA) may pay a claim even if a third party is likely liable and then seek to recoup payment from the liable third party. This is referred to as “pay and chase.” Pay and chase is required for particular circumstances where there is a risk that if the SMA were to cost avoid claims, providers might choose not to participate in the Medicaid program in order to avoid dealing with the administrative burden associated with Medicaid cost-avoidance claims processing requirements. Pre-Bipartisan Budget Act of 2018 the law required that states make payments for prenatal or preventive pediatric care, including screening and diagnosis, within 30 days without regard to third party liability, and if a third party is found to be liable, seek reimbursement after payment is made.

Effective February 9, 2018 section 53102(a)(1) of the Bipartisan Budget Act of 2018 amended section 1902(a)(25)(E) of the Act to require a state to use standard coordination of benefits cost avoidance when processing claims for prenatal services which now included labor and delivery and postpartum care claims. Therefore, if the SMA has determined that a third party is likely liable for a prenatal claim, it must reject, but not deny, the claim returning the claim back to the provider noting the third party that Medicaid believes to be legally responsible for payment. If, after the provider bills the liable third party and a balance remains or the claim is denied payment for a substantive reason, the provider can submit a claim to the SMA for payment of the balance, up to the maximum Medicaid payment amount established for the service in the State Plan.

Additionally, because 1902(a)(25)(E) of the Act now applies to CHIP, states should follow the same policies in their CHIP programs.

Delaying the implementation date of the Bipartisan Budget Act of 2013 provision (which allows for payment up to 100 days for claims associated to medical support enforcement, instead of 30 days under previous law and pediatric preventive services cost-avoidance option) from October 1, 2017 to October 1, 2019:

Section 53102(b)(2) of the Bipartisan Budget Act of 2018 delays the implementation date from October 1, 2017 to October 1, 2019 of the Bipartisan Budget Act of 2013 provision, which allowed for payment up to 90 days after a claim is submitted that is associated with medical support enforcement instead of 30 days under previous law. Medical support is a form of child support that is often provided through an absent parents employers health insurance plan.

Effective April 18, 2019, section 7 of the Medicaid Services Investment and Accountability Act of 2019 (Pub. L. 116-16) amended section 202(a)(2) of the Bipartisan Budget Act of 2013 to allow 100 days instead of 90 days to pay claims related to medical support enforcement pursuant to section 1902(a)(25)(F)(i) of the Act.

Additionally, effective October 1, 2019, section 53102(a)(1) of the Bipartisan Budget Act of 2018 amended section 1902(a)(25)(E) of the Act, to require a state to make payments without regard to third party liability for pediatric preventive services unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for 90 days. This is a correction of information in the June 2018 guidance.

Conclusion

As always, CMS is happy to provide technical assistance to states on the legislative provisions outlined in this letter. For reference, the full text of the 2018 legislation can be found here: <https://www.congress.gov/115/bills/hr1892/BILLS-115hr1892eas2.pdf>, and the 2019 legislative changes can be found here:

<https://www.congress.gov/116/bills/hr1839/BILLS-116hr1839enr.xml>

For specific questions related to Third Party Liability, you may contact Cathy Sturgill, Technical Director of Coordination of Benefits/Third Party Liability team, within the Division of Health Homes, PACE, and Coordination of Benefits/Third Party Liability at cathy.sturgill@cms.hhs.gov.