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CMS Medicare Secondary Payer (MSP) Alert

February 15, 2023

It has been brought CMS's attention again that there are some providers, physicians and other suppliers who are denying services to beneficiaries due to an open Medicare Secondary Payer record on the beneficiary Medicare record.

CMS is encountering a critical issue where several providers, physicians and other suppliers are **denying** services and treatment to Medicare beneficiaries, due to an open MSP record on Common Working File (CWF). This practice must **not** be followed. Please share the following immediately with any billing, coding and revenue cycle staff involved.

⇒ Providers and suppliers shall **not deny** medical services or entry to a Skilled Nursing Facility (SNF) or hospital after you discover that there is an open or closed Group Health Plan (GHP), whether the beneficiary is entitled due to

- Age
- Disability
- End Stage Renal Disease (ESRD)
- Non-Group Health Plan (NGHP-Liability {L})
- No-Fault (NF)
- Workers' Compensation (WC)

⇒ MSP record found in HIPAA Eligibility Transaction System (HETS) 270/271, or on CWF. You must continue to see Medicare beneficiaries if a claim that was previously mistakenly denied by Medicare, due to an MSP occurrence. These claims may be appealed through the appeal process.

⇒ If services are covered under an open GHP or related to an NGHP, MSP accident or injury incident, bill the primary insurer first.

- Situations where providers bill for services related to a new accident or injury, and not related to existing NGHP MSP record found on HETS or CWF
- May need to use the same diagnosis codes that are found on the NGHP record in HETS and CWF

⇒ Submit these claims to secondary Medicare, **after** you submit these claims to the appropriate GHP and/or NGHP insurer.

- NGHP insurer may deny these claims if claim not related to the original accident or injury, or the case has not been settled

⇒ After submitting these claims to Medicare, Medicare may mistakenly deny these services because the diagnosis codes on the claim are related to the diagnosis codes found on the NGHP MSP record on HETS and CWF.

- Appeal inappropriately denied claims with Noridian.

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⇒ Physicians, providers, and other suppliers must provide an explanation or reason code to justify services **not related** to the accident or injury on record.

- **Continue** to see or provide services to the beneficiary if those claims are mistakenly denied

⇒ A Workers' Compensation Medicare Set Aside (WCMSA) MSP record is **not** a reason to deny services, but instead provides information, as to who is the **appropriate** primary payer for that situation.

⇒ WCMSA is an agreement between the CMS and the CMS beneficiary about what value of settlement funds must be spent for care related to all settled WC injuries or illnesses before Medicare begins primary payment for those settled injuries or illnesses.

- Must first verify, via the HETS 270/271 transaction, whether "W" WCSA record exists
- Indication showing "W" MSP WCMSA record exists, the patient should have WCMSA that **may** pay for services, and then, the provider bills patient directly
- If WCMSA does not pay for all of the services, due to total benefits exhaustion, provider may submit Medicare bill indicating what the WCMSA paid
- Medicare may then pay as primary or secondary payer, dependent upon WCMSA status and how much it paid on the claim
  - Providers submits a bill with regular billing procedures indicating occurrence code 24 (insurance denied) and the date of denial in FL 31-36
  - Plus, supplementary statement calling attention that WCMSA denied payment or annotates FL 80, remarks, with the reason

Billing No-fault, Liability and Worker's Compensation Claims

When providers, physicians and other suppliers render services for beneficiaries who have an open NGHP found on CWF, and in HETS, they must bill as follows:

⇒ NGHP record shows indicator of "Y" identifying there is Ongoing Responsibilities for Medicals (ORM), do **not** bill Medicare.

- Bill NGHP insurer first as they are the proper primary payer for claims related to the accident or injury.

⇒ If the NGHP record shows an indicator of "N" or "BLANK" (identifying there is no ORM), bill the NGHP insurer first. If the NGHP insurer denies the claim and identifies the reason for the denial on the remittance advice, the denial should be placed on your claim to Medicare.

- Assists Medicare in determining to make **conditional** payment during the promptly payment period

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⇒ If there is an open employer Group Health Plan record on CWF and HETS, always bill the GHP insurer **first**, even before you bill the NGHP for both ORM and non-ORM claims.

References: Noridian DME JA and NGS Websites