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Medicaid Recovery:

Five things you need to know

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While Medicare Secondary Payer (MSP) compliance has dominated claims payers' attention for years, important developments in the other "M"—Medicaid—have been creeping up the charts. Recent changes to the Medicaid program have resulted in increased enrollment, and Medicaid spending consumes significant portions of state and federal budgets. Meanwhile, some states, such as Rhode Island, Texas, and California, have instituted different reporting programs to aid their Medicaid secondary payer recovery efforts.

It is time to shift focus to Medicaid to make sure the other "M" is on your compliance radar. To get started, here are five key facts to keep in mind when prepping for Medicaid compliance.

1. Medicaid is different from Medicare

First things first: We need to keep Medicare and Medicaid straight. These two different programs have distinct eligibility criteria, funding sources, and secondary payer rules.

Medicare is a federally funded program administered nationally by the Centers for Medicare & Medicaid Services (CMS). Eligibility is based on age and disability, including individuals who are aged 65 and older, those accepted as disabled under Social Security disability, and those who have end-stage renal disease or amyotrophic lateral sclerosis (ALS).[1]

Medicaid, in contrast, is a program funded jointly by the states and federal government.[2] At the federal level, Medicaid is overseen by CMS. However, the actual delivery of benefits is administered by the states—in accordance with federal requirements. In general, Medicaid provides medical benefits to certain low-income adults, children, pregnant women, and certain disabled and elderly individuals.[3] Each state sets its own rules and regulations regarding eligibility, coverage options, covered services, and payment mechanisms.[4]

2. Medicaid enrollment and expenditures have increased

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individuals are on Medicaid, which translates to one in five Americans.

Currently, approximately 72 million individuals are on Medicaid, which translates to one in five Americans.[5] Medicaid eligibility—and enrollment—have increased over the past several years. A major reason for this is that the Affordable Care Act (ACA) expanded Medicaid eligibility to include non-elderly adults earning less than 138 percent of the poverty level.[4] While the United States Supreme Court generally ruled that ACA's expansion was optional,[6] 37 states have opted to expand their Medicaid eligibility criteria as of May 2019.[7] In a more recent development, in June of this year, California expanded its Medicaid eligibility to include unauthorized immigrant adults ages 19 to 25.[4]

Medicaid expenditures account for a significant part of state and federal budgets. In fiscal year 2018, total Medicaid spending was $598 billion, with 62.5 percent paid by the federal government and 37.5 percent financed by states.[8] Overall, Medicaid accounts for one in six dollars spent in the healthcare system and more than half of spending on long-term services.[9] Looking ahead, Medicaid spending growth is projected to average 6 percent annually between 2020 and 2027.[4]

3. Medicaid has recovery rights—and recovery claims are on the rise

Many claims payers are reporting an increase in Medicaid recovery claims—unsurprising given the rise in program costs. Medicaid lien claims may also be ramping up due to a large quantity of improper Medicaid payments. In fiscal year 2018, estimated improper Medicaid payments—including payments made for people not eligible for Medicaid or for services not actually provided—totaled $36.2 billion.[10]

Medicaid has recovery rights under federal law,[11] along with state-specific recovery statutes and regulations governing Medicare recovery. State Medicaid programs are tasked with creating their own reimbursement and collection processes.

The "amount" Medicaid is entitled to recover has been the source of substantial legal wrangling over the past few years. United States Supreme Court rulings in *Arkansas Dept. of Health and Human Svcs. v. Ahlborn*, 547 U.S. 268 (2006) and *Wos v. E.M.A. ex rel. Johnson*, 568 U.S. 627 (2013) limited Medicaid's recoverable amount. Then, congressional amendments briefly overturned those rulings, an action Congress later reversed. While a deep dive into this legal soap opera is beyond the scope of this article, a more in-depth analysis is outlined in Kate Riordan's excellent article entitled **Medicaid Expansion Makes Recovery Efforts More Urgent**.

Simply put, Medicaid recovery rights are limited to that portion of a claim settlement attributable to medical damages, based on the Supreme Court's rulings in *Ahlborn and Wos*. This is different from Medicare's dollar-for-dollar recovery right (minus procurement costs) under the Medicare Secondary Payer statute.[12]

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4. State Medicaid "reporting" programs are starting to emerge

On the Medicare side, payers are very familiar with Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA.) This federal law requires insurers and certain other responsible entities to report claims electronically to CMS that involve Medicare beneficiaries.

Currently, Medicaid has no similar federal reporting law. It is important to note, however, we are starting to see some states implement their own reporting processes to help them better identify claims involving Medicaid beneficiaries for secondary payer recovery purposes.

These are a few states that have been active on the Medicaid reporting front:

Rhode Island

In 2012, Rhode Island enacted its Medical Assistance Intercept Act, which established the Medical Assistance Intercept System (MAIS). MAIS is an electronic data match used to identify Medicaid recipients with liability and workers' compensation insurance claims. It is designed to intercept payments of $500 or more for reimbursement to Rhode Island's Medicaid program.[13] Before settling a claim, a workers' compensation and liability carrier must use MAIS to determine if there is a Medicaid recovery claim that needs to be addressed. Overall, MAIS seems to be paying dividends for Rhode Island. In fiscal year 2018, MAIS recovered $20 million,[14] while the program hit a milestone of $25 million recovered in April 2019.[15]

Texas

In December 2018, Texas became the second state to join MAIS, although, unlike Rhode Island, insurer participation is voluntary. Texas is looking to MAIS to *"act as a cost control initiative which will intercept insurance payments [and other lump sum payments] to claimants who receive medical assistance through Medicaid. Retaining MAIS will allow the State to receive relevant, quality assured data matches thereby increasing medical assistance subrogation through the interception of insurance claim settlements, before proceeds are allocated to an insurance claimant."*[16] By implementing this change, it would be reasonable to assume that Texas is interested in better identifying claims involving Medicaid beneficiaries for potential secondary payer activities.

California

California recently enacted a new law that requires Medicaid beneficiaries (or their representatives) to report casualty, workers' compensation, or tort claims within 30 days of filing to the Department of Health Care Services (DHCS).[17] As with Texas, it is believed that California Medicaid (Medi-Cal) will leverage this information to increase its recovery activities—especially given the state's recent expansion of Medicaid eligibility.

Oregon

Oregon may be next to join the reporting and recovery bandwagon. In August 2019, the Department of Health Services and Oregon Health Authority (DHSOHA) issued proposed regulations that would require third-party insurers to submit certain claims and insurance coverage information to the Office of Payment Accuracy and Recovery (OPAR) for evaluation of potential Medicaid payment recoupment.[18]

Under the proposed regulations, an insurer would be required to provide OPAR every 30 days with "*an electronic file of all insured or subscribed individuals residing in Oregon to assist OPAR to do data match with recipient records to determine if any Medicaid recipient has coverage through the insurer.*"[19] Going forward, we will be monitoring if and when these proposed regulations are enacted.

5. You do not have to go it alone on Medicaid compliance

ISO is here to help you navigate new Medicaid compliance challenges to keep you compliant and reduce costs. Our MAIS Reporting Service, available to members of ISO ClaimSearch®, helps your organization respond to Medicaid reporting and verification requirements in participating states. Our Medicaid Lien Resolution services help you identify Medicaid liens and provide expert consultation on Medicaid compliance.

About the Author

Mark Popolizio is the Vice President of MSP Compliance for Verisk Casualty Solutions. He is a nationally recognized authority in Medicare Secondary Payer (MSP) compliance. Mark practiced insurance defense litigation for ten years concentrating in the areas of workers' compensation and general liability. As of 2006, Mark has dedicated his focus exclusively to MSP compliance working with carriers, self-insureds, TPAs and other claims professionals in addressing MSP compliance issues. Since 2001, Mark has been a regularly featured presenter on MSP issues at national seminars and other industry events – and has authored numerous national articles addressing several topics related to MSP matters In addition, Mark has released several articles on Third-Party Litigation Funding issues. Mark is also active with several industry groups.

Mark graduated Summa Cum Laude from Quinnipiac University in Hamden, Connecticut with Bachelor of Science degrees in Legal Studies and Sociology. He relocated to South Florida in 1992 to attend law school at Nova Southeastern University School of Law in Ft. Lauderdale, Florida. While at law school, Mark served as a Judicial Clerk to the late Honorable John D. Wessel (15th Judicial Circuit, Palm Beach County, Florida) and was a research assistant for Professor Leslie Larkin Cooney. Mark graduated from Nova in 1995 and is licensed to practice law in Florida and Connecticut.

Notes

1. Medicare Program – General Information, CMS.gov (https://www.cms.gov/Medicare/Medicare-General-Information/MedicareGenInfo/index.html) and An Overview of Medicare, Henry J. Kaiser Family Foundation (February 2019).
2. https://www.medicaid.gov/medicaid/index.html
3. https://www.medicaid.gov/medicaid/index.html
4. Riordan, Kate, Medicaid Expansion Makes Recovery Efforts More Urgent (July 2019).
5. See *Medicaid Enrollment & Spending Growth: FY 2019 & 2020*, Henry J. Kaiser Family Foundation (Issue Brief, October 19, 2019) and *A View from the States: Key Medicaid Policy Changes* (Executive Summary), Henry J. Kaiser Family Foundation (October 2019). Overall, Medicaid enrollment growth peaked in FY 2015 as a result of ACA's implementation in many states. The rapid growth in enrollment rates has slowed and leveled somewhat recently in light of the stronger state economies. See, for example, *Medicaid Enrollment & Spending Growth: FY 2019 & 2020*, Henry J. Kaiser Family Foundation (Issue Brief, October 19, 2019).
6. *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012).
7. Riordan, Kate, *Medicaid Expansion Makes Recovery Efforts More Urgent* (July 2019). *See also, A View from the States: Key Medicaid Policy Changes* (Executive Summary), Henry J. Kaiser Family Foundation (October 2019).
8. *Medicaid Enrollment & Spending Growth: FY 2019 & 2020*, Henry J. Kaiser Family Foundation (Issue Brief, October 19, 2019).
9. Id.
10. Id.
11. See generally, 42 U.S.C. 1396a(a)(25) and 42 C.F.R. 433 (Subpart D).
12. See, for example, 42 C.F.R. 411.37.
13. See generally, R.I. G.I. Chapter 27-57.1-1, et. seq. and https://ri-mais.com/
14. https://ri-mais.com/mais/RI/website/news_mais_exceeds_20_million.html
15. https://ri-mais.com/mais/RI/website/news_mais_25_million.html
16. https://ri-mais.com/mais/RI/website/news_TX_HHS.html
17. See California Welfare and Institutions (W&I) Code 14124.70.
18. The Notice of Proposed Rulemaking indicates that the proposed rules relate to Chapter 410 and is entitled "Data Sharing with Legally Liable Third Parties and Limitations on Third Parties Rejection of Claims." The notice references in the "need for the rules" section that the proposed rules are aimed at *"implementing federal mandates that Oregon is to make 'reasonable efforts to determine if a third party is legally liable for some or all medical expenses paid by Medicaid for a recipient: commonly known as 'third party liability' or TPL.'" Under the proposed rules, an "insurer" is defined to mean "an employee benefit plan, self-insured plan, managed care organization or group health plan, a third party administrator, fiscal intermediary or pharmacy benefit manager of the plan or organization, or other party that is by statute, contract, or agreement legally responsible for payment of a claim for a health care item or service."*
19. State of Oregon, Office of the Secretary of State, Notice of Proposed Rulemaking, "Data Sharing with Legally Liable Third Parties and Limitations on Third Parties Rejection of Claims," Proposed Rule 410-120-1285 (8), (Filing Date: August 13, 2019).

Get your complimentary consultation

For more information on how we can help you respond to the challenges of Medicaid reporting and recovery, please contact:

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