



Medicaid Third Party Liability Recovery: Soon to Be The Next Medicare Secondary Payer?

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Medicaid Third Party Liability (TPL) recovery across the nation is expanding. Medicaid TPL is quickly coming to the forefront of the industry's conversation with regard to claims handling where a Medicaid beneficiary may be implicated. With healthcare spend on the rise and budgets being squeezed, the Federal government has recently been putting a great deal of pressure upon the states to identify and recover in TPL situations. This has resulted in many increased recovery efforts by the states to recover payments made by Medicaid where a third party is legally responsible.

How can we analogize Medicaid TPL to Medicare Secondary Payer? When we think of Medicare Secondary Payer we think of Section 111 reporting, reimbursement of Medicare conditional payments, and Medicare Set-Asides. While there is no requirement or such thing currently as a "Medicaid Set Aside", we are starting to see signs that Medicaid is following its big brother Medicare with regard to Medicaid reporting and Medicaid lien reimbursement.

With Medicaid reporting, there are signs that states are beginning to move toward the requirement of electronic reporting of claims with Medicaid beneficiaries. Many are aware of Rhode Island, which has already implemented an electronic reporting system where Medicaid beneficiaries are matched and identified. In the past, Kentucky like most other states had antiquated systems to compare information from auto no-fault and workers' compensation with Medicaid beneficiaries. Last year Kentucky completed an upgrade of its workers' compensation EDI system. The system now allows for better matching. Additionally, a model reporting standard for Medicaid was put out by the National Conference of Insurance Legislators (NCOIL). Several states that have been discussing implementing this NCOIL reporting model for their Medicaid Liability only TPL are Colorado, Louisiana, South Carolina, Texas, West Virginia, and Vermont. Adoption of the NCOIL model by these states have not yet been finalized, but are currently being contemplated.

A recent buzz occurred recently where insurance payers began receiving workers' compensation insurance questionnaires from Kentucky with regard to each of its injured

workers to identify Medicaid beneficiaries. Many have been questioning where and why this questionnaire came from, if there is any obligation to respond to it, and if other states are implementing similar policies to discover this similar information so that Medicaid can further its TPL recovery efforts. It is worthy to note that the questionnaire states that both health insurers and Medicaid liens are recoverable in Kentucky workers' compensation claims if the holder of the lien places the parties on notice of the lien and/or intervenes in the action.

The Deficit Reduction Act of 2005 set a few wheels in motion on Medicaid. In addition to mandating States to collect data from health insurance carriers to improve TPL recoveries, it also encouraged states to set up additional mechanisms to discover potential recovery situations from non-group health plans, such as liability and workers' compensation insurance. Congress has also been moving states to increase TPL recoveries through the Government Accountability Office (GAO). A GAO report from May of 2014 ([link to GAO report](#) can be found [here](#)) called for increased TPL Medicaid recoveries by states.

With regard to TPL recoveries, the Deficit Reduction Act of 2005 additionally authorized states to hire recovery audit contractors (RACs) to assist. The vast majority of states have a TPL unit, and have a RAC in place to coordinate recovery efforts. Currently and nationally, HMS is the leading RAC, but other RAC agencies do exist. Medicaid RAC Activity can be found through this interactive map: <http://www.medicaid-rac.com/medicaid-rac-activity/>. When Medicaid TPL is being asserted through a lien demand from Medicaid or its RAC, it is important for payers to be responsive to such asserted liens as there could be potential consequences for failing to act. Numerous states have a false claims act and deceptive claims practices laws in place to discourage fraud and deceptive claims practices against state governments.

In summary, Medicaid TPL reporting and recovery efforts are underway. The most important action item that payers can undertake is to be proactive: know whether your claimant is on Medicaid, become familiar with Medicaid state laws, and where requested, provide Medicare enrollment and claims data to Medicaid and/or its contractor. Also, remember that self-reporting is required by adjusters in some particular states. In short summary, be proactive and once a Medicaid TPL situation is identified, be sure to cooperate with the Medicaid state agency or the RAC so as to not run afoul of any TPL regulations.