Christine Hummel, Esq.
Hummel Consultation Services
Post Office Box 148
Ferdinand, Indiana 47532-0148
Phone: 603-758-1410
Fax: 978-338-8116
Email: christine@hummelcs.com
Website: http://www.hummelcs.com

Copyright © 2023 Hummel Consultation Services. No unauthorized duplication or dissemination is permitted. The information contained herein is informational only and does not constitute legal advice, nor should this information be solely relied upon in any case. Every case is unique and requires individual review regarding MSP compliance. Medicare changes its policies frequently and without warning, which may impact the information contained herein.

Medicare Advantage Plans

The purpose of this handout is to provide a practical guide to the Medicare lien search process (also known as the Medicare Conditional Payment). It is not intended to provide a historical or theoretical overview of the lien search process, but rather to provide helpful tips and guidance to assist the practitioner in obtaining both the tentative and final Medicare lien amount.

I. Tips for dealing with Medicare Advantage Plans

a. Statutory authority for both Part C and Part D plans: 43 CFR 422.108 and 42 CFR 423.462

b. At present the only way to determine if a Medicare beneficiary has participated in a Part C or D plan is to ask the beneficiary. The tools presently available to determine Medicare eligibility can only indicate if the injured person is presently eligible for Medicare but cannot provide any information about the specific Medicare plan or plans they are participating in.

c. Easiest way to determine if at least one Part C or D plan is involved in your case: If the injured party ever required prescription medications for the injury

in question, ask the injured party for a copy of the card they provide to their pharmacist. Traditional A/B Medicare does not pay for outpatient medications; therefore, the person must provide a different insurance card to their pharmacist.

d. Beginning December 2021, Responsible Reporting Entities will have access to some Medicare Part C and Part D plan identifying information.

e. Do not forget about Open Enrollment! A person can change their Medicare plan every year. Therefore, it is possible multiple Part C and/or D plans may be involved in the same case. This will require multiple conditional payment searches.

f. March 2018 United States District Court for Connecticut held that a Part C plan could bring a private cause of action for recovery of unpaid conditional payments but could only bring the recovery action against the Defendant if double damages were sought(the primary plan or payer). The Part C plan could not bring the recovery action against the Medicare beneficiary or the Beneficiary's attorney. Given the holding in this case, Defendants who allow Plaintiffs to do the Part C conditional payment search must obtain copies of all letters and documents from the Part C provider. Further, it is recommended that the Defendant pay the Part C provider directly rather than distributing all settlement funds to plaintiff. See: Aetna Life v Guerrera.

NOTES:_____
_____
_____
_____
_____

g. Each Part C and D plan will handle the lien search process a little differently. Therefore, it is important to ask the plan administrator the best method for requesting lien information. Do not assume all plans have the some processes and procedures.

h. All plans will allow you to dispute unrelated charges.

i. All plans will reduce the Part C or D conditional payment amount for procurement costs (attorney's fees and costs) but you will likely have to specifically request this reduction; it may not be given automatically.

j. August 2022 Eleventh Circuit Court of Appeals held that a four year statute of limitations (28 USC section 1658(a)) will apply when a Medicare Advantage plan brings suit under the Private Cause of Action provision of the MSP. But the SOL begins to run when the action "accrues"; not necessarily when the Plan receives notice of settlement. See MSPA Claims 1 LLC v Tower Hill Prime Insurance 2022 U.S. App. Lexis 22162.

NOTES:_____
_____
_____
_____
_____