

January 22, 2019

AETNA BETTER HEALTH OF PENNSYLVANIA AETNA BETTER HEALTH KIDS

PRENATAL THIRD PARTY LIABILITY (TPL) CHANGES EFFECTIVE 2/9/2018

Dear Provider,

The Bipartisan Budget Act of 2018 includes several provisions which modify third party liability (TPL) rules related to special treatment of certain types of care and payment.

Currently, 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. The new section of the Social Security Act requires that states take “all reasonable measures to ascertain the legal liability of third parties.” The Bipartisan Budget Act of 2018 makes changes to the special treatment of certain types of care, delays the implementation changes to the time period for payment of claims, repeals a provision regarding recoveries from settlements, and applies TPL to CHIP.

Removing Special Treatment of Certain Types of Care:

DHS may pay a claim even if a third party is likely liable and then seek to recoup payment from the liable third party or “pay and chase.” Pay and chase is required for some circumstances. Previously, current law required that DHS pay 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.

In situations where TPL is likely for a prenatal claim, we are required to cost avoid and reject, **but not deny** the claim and return it to the provider noting the third party that Medicaid believes to be legally responsible for payment. If after the provider bills the liable third 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, since this now applies to CHIP, states should follow the same policies in their CHIP programs.

Depending on how a provider bills, the SMA may need to cost avoid claims that it otherwise would have attempted to pay and chase. As SMAs are now required to cost avoid prenatal claims, the option to pay and chase for the entire bundled claim is no longer allowed. If an SMA cannot

differentiate the costs for prenatal services from labor and delivery on the claim it will have to cost avoid the entire claim.

Delaying the implementation date of the Bipartisan Budget Act of 2013 provision (which allows for payment up to 90 days after a claim for special populations, instead of 30 days under current law) from October 1, 2017 to October 1, 2019:

Pay and chase is required for particular circumstances in which there is a risk that if the SMA were to cost avoid claims, providers might choose not to participate in the Medicaid program. Effective October 1, 2019, SMAs will have 90 days (instead of 30 days under current law) to pay claims related to medical support enforcement, preventive pediatric services, labor and delivery, and postpartum care.

Repealing section 202(b) of the Bipartisan Budget Act of 2013:

Section 53102(b)(1) of the Bipartisan Budget Act of 2018 also repeals section 202(b) of the Bipartisan Budget Act of 2013. SMAs are now required to recover funds only from the portion of a beneficiary's settlement or judgment intended to cover medical items or services.

Settlements and awards often contain more than just payment for the cost of medical care, such as payment for pain and suffering or lost wages.

Additionally, this change repeals the SMAs ability to place liens against property for the collection of excess or improper medical assistance payments made on the behalf of an individual who should not have received them in the case of a court judgment and the state's rights to third party payment recoupment.

These changes are effective as of September 30, 2017. If between October 1, 2017, and issuance of this Informational Bulletin, a SMA pursued recovery from funds not allocated solely for medical items or services, the SMA must move forward with refunding those funds.

Third Party Liability – Application to CHIP

The application process for CHIP allowed SMAs the option of obtaining information related to third parties even though children must be uninsured to qualify for CHIP. Although children must be uninsured to qualify for CHIP, there may be situations where other types of third parties may be liable for some health expenses, such as auto insurance following an accident.

Section 53102(d) of the Bipartisan Budget Act of 2018 amends section 2107(e)(1) of the Act to apply Medicaid third party liability requirements at 1902(a)(25) of the Act. It is no longer optional to obtain information related to third parties during the CHIP application process. SMAs are now required to pursue third party liability information during CHIP the application process.

This change is effective February 9, 2018.

If you have questions about this change, just contact Aetna Better Health of Pennsylvania Provider Relations by calling **1-866-638-1232**.

Provider Relations

Aetna Better Health of Pennsylvania