Optum

The Impact of Medicare Secondary Payer Compliance

Over the life of a workers' compensation claim

April 20, 2022 | 2:00-3:00 p.m. ET

Disclosure

No planner, presenter or content expert has a conflicting interest affecting the delivery of this continuing education activity. Optum does not receive any commercial advantage nor financial remittance through the provided continuing education activities.

Medical disclaimer

Medicine is an ever-changing science. As new research and clinical experience broaden our knowledge, new treatment options and approaches are developed. The authors have checked with sources believed to be reliable in their efforts to provide information that is complete and generally in accord with the standards accepted at time of publication.

However, in view of the possibility of human error or changes in medical sciences, neither Optum nor any other party involved in the preparation or publication of this work warrants the information contained herein is in every respect accurate or complete, and are not responsible for errors or omissions or for the results obtained from the use of such information. Readers are encouraged to confirm the information contained herein with other sources.

This educational activity may contain discussion of published and/or investigational uses of agents that are not approved by the Food and Drug Administration (FDA). We do not promote the use of any agent outside of approved labeling. Statements made in this presentation have not been evaluated by the FDA.

Disclaimer

The display or graphic representation of any product or description of any product or service within this presentation shall not be construed as an endorsement of that product by the presenter or any accrediting body. Rather, from time to time, it may facilitate the learning process to include/use such products or services as a teaching example.

Accreditation of this continuing education activity refers to recognition of the educational activity only and does not imply endorsement or approval of those products and/or services by any accrediting body.

CE credits for this course are administered by the CEU Institute. If you have any issues or questions regarding your credits, please contact rosters@ceuinstitute.net.

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Presenters

Melanie Carrozza

Vice President, Product

Michael Flower

MSP Compliance Counsel

Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Learning objectives

1. Defining MSP compliance
2. Why MSP compliance is challenging
3. The areas of MSP compliance
4. Why worry about MSP compliance
5. How MSP compliance impacts the life of my claim
5. My MSP Compliance Resources

Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Defining MSP compliance

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

MSP compliance

Medicare Secondary Payer Act of 1980 42 USC Section 1395y(b)(2)	**Medicare Advantage statute (Part C)** expressly acknowledges MA payments are “made secondary” (42 U.S.C. §1395w-22(a)(4))	**The Medicare Prescription, Improvement and Modernization Act of 2003** [Pub. L. No. 108-173], (42 U.S.C. §1395) (Part D)
Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) Pub. L. No. 110-173 (2007) (42 U.S.C. §1395y(b)(8)) (MIR)	**Strengthening Medicare and Repaying Taxpayers Act of 2012 (SMART)** 42 U.S.C. §1395t	**Provide Accurate Information Directly (PAID) Act** 42 U.S.C. §1395y(b)(8)(G)

Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

MSP Act has been amended

All insurers are now considered primary payers and “responsible” parties are obligated to reimburse Medicare.

CMS recognizes three NGHP type of claims:

- Workers’ compensation
- Liability
- No-fault

The non-group health plans (NGHP) include:

- Workers’ compensation
- Auto insurers liability
- Homeowners insurers liability
- Commercial General Liability (CGL) Insurers-premises liability
- Professional Liability insurers-malpractice
- Self-insured entities
- Auto, CGL, Homeowners policies also have No-Fault coverage known as Med Pay, PIP

Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Why MSP compliance is challenging

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Why MSP compliance is challenging

20% of
case load

Multiple facets
Three areas of compliance

Claim
specific

Multiple
governmental agencies

Changing
guidelines

CMS
terminology

Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Areas of MSP Compliance

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Protection of Medicare's interest

It is the responsibility of all parties involved in a settlement to assure Medicare's interest has been considered.

Medicare is due protection in three areas:

Section 111 Reporting	Conditional Payments	Medicare Set-Aside

Each area has its own rules, policies and procedures.

Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Section 111 of MMSEA is Mandatory Insurer Reporting (MIR)

Responsible Reporting Entity (RRE)	The insurer underwriting company who bears the responsibility of MSP noncompliance rather than the third-party administrator (TPA) even though the TPA often provides information that fills the data fields within the claims system.
Mandatory Insurer reporting (MIR)	Required for claimants who are currently Medicare eligible
Medicare Query to determine eligibility	Medicare allows for its database to be queried to know if the claimant is a current Medicare beneficiary or will be one in the next three months.
MIR data	Required and needed to transmit to The Centers for Medicare and Medicaid Services (CMS) during prescribed quarterly reporting/submission time
Required data fields for all claim types:	• Same query data fields • Three claim types-workers' compensation, liability, and no-fault
Coordination of Benefits (COB)	Allow plans that provide health and/or prescription coverage for a person with Medicare to determine their respective payment responsibilities

Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Conditional Payments

Payments made by Medicare for treatment related to the auto, liability, no-fault, or work comp claim where primary payer has/may have an obligation to make payment

Medicare (Part A and B)
Medicare Advantage Plan (Part C)
Prescription Drug Plan (Part D)

- Primary payers must reimburse Medicare for conditional payments it has made, Arises even if liability is contested
- Responsibility for reimbursement can be demonstrated by acceptance of compensability, settlement, judgment, arbitration award, or other payment made pertaining to the claim
- Part C and Part D plans are third-party payers that stand in the shoes of Medicare and require repayment of conditional payments just like Medicare

Medicare Set-Aside

A Medicare Set-Aside is an account set up to pay future related medical expenses otherwise reimbursable by Medicare for an inured person that would have been paid by Medicare had the injury/illness NOT been the responsibility of the primary payer.

- Any claimant who receives a settlement, judgment or award that includes an amount for future medical expenses must take Medicare's future interest with respect to related medical expenses
- The purpose of an MSA is to estimate, as accurately as possible, the total cost that will be incurred for all future related medical expenses otherwise reimbursable by Medicare pertaining to the underlying claim
- MSA allocation includes line item medical and pharmacy needs projected over the life expectancy of the claimant
- An MSA allocation amount represents a portion of the total settlement amount that is designated to pay for all future related medical, surgical, and prescription expenses pertaining to the claim(s)

Optum

Why to be concerned about MSP compliance

Risk and consequences of noncompliance

Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Risk and consequences of non-compliance

Conditional Payment Recovery Demands from CMS to Insurers/TPAs to reimburse

Plaintiffs alleging bad faith in handling of Conditional Payment Resolution Process

Jurors deciding whether Insurers acted reasonably in handling conditional payment issues

Treasury offsets are taken from Insurers/TPAs assets for debts owed to CMS

Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Risk and consequences of noncompliance

Medicare beneficiary may seek to overturn the Settlement Agreement due to Medicare conditional payment resolution mistake

Lawsuits against the insurer/RRE using the False Claims Act to recoup conditional payments which include triple damages

Medicare beneficiaries, beneficiaries estate, Part C Medicare Advantage Plans and Part D Prescription Drug Plans will file a private cause of action against the insurer/RRE seeking recovery, including double damages not to mention astronomical defense costs

Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Risk and consequences of noncompliance

Medicare will deny payment for related treatment to beneficiaries who have no MSA

Medicare will deny payment for related treatment to beneficiaries who have misspent or cannot account for MSA funds

Medicare will deny payment for related treatment to beneficiaries until the total settlement amount is spent on related care

State courts finding MSAs not needed or defining MSA terms and amounts outside their jurisdiction and contrary to MSP Act

Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Risk and consequences of noncompliance

Settlement language lacking Medicare details binding on parties, leaving parties unprotected from MSP viewpoint

Civil money penalties up to $1,000 per day per claim will be assessed against insurers/RREs for failure to report or for reporting inaccurately, incompletely or untimely to CMS the acceptance of ORM, an ORM Termination Date, ICD diagnosis codes, TPOC date and amount

Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

How MSP compliance impacts the life of my claim

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

MSP compliance through the life of the claim

	GOALS: Identify Medicare Beneficiaries for MIR and cost mitigation	**GOALS:** Accurately report appropriate claims to Medicare and monitor claim activity to address cost drivers prior to settlement.	**GOALS:** Timely and accurately close out MIR responsibility, resolve any open conditional payment items and appropriately fund MSA allocation.
	Onset of claim	**Life of claim**	**Settlement**	**Post settlement**
Compliance requirements	MIR Query claim to determine Medicare Beneficiary Status	• Turn ORM to Y • Report Accepted ICD codes • Monitor for Clinical intervention • Monitor for conditional Payments	• Report all TPOC, enter ORM termination date, confirm ICD codes • Resolve all outstanding conditional payments • Include MSA allocation in settlement	Reimburse conditional payment made prior to settlement
Adjuster action recommended	Query five key data elements until claimant becomes beneficiary or claim settles	• Respond to CP notices timely • Approve Clinical Intervention	• Request a final demand for conditional payments and settle all demands • Include appropriate MSP language in settlement documents	Process notices from CRC, BCRC, Treasury
Compliance services	Beneficiary Monitoring through Section 111 Reporting	• Medicare Clinical Mitigation • Conditional payment Verification Analysis, Dispute	• MSA/MSA Submission • Final Conditional Payment Demand	Conditional Payment Analysis, Dispute and Appeals

Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Actions needed during…

Onset of claim

Mandatory Insurer Reporting Responsibilities

- Obtain the big five to query the claim
- Confirmed to be a Medicare beneficiary?
  (Add compensable ICD codes)
- Assuming responsibility for future medical?
  - Turn ORM indicator to Y (once turned to Y do not return to N or it will delete the claim from the Medicare System)
- Did Medicare provide contact information for a Medicare Advantage Plan (MAP) and/or Part D Plan (PDP)?
- The PAID Act requires CMS to provide MAP/PDP contact information to you for any MAP/PDP that provided coverage in the past three years

Life of claim

Settlement

Post settlement

Optum

Actions needed during…

Onset of claim

Life of claim

Claims can evolve, and insurers must remain compliant as changes occur

- Monitor claim for changes in accepted conditions to update ICD codes
- Monitor to see if Medicare has made a conditional payment
- Review medical treatment regime for appropriate of care and cost drivers that might impact ability to obtain a reasonable MSA

Settlement

Post settlement

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Actions needed during…

Onset of claim	Life of a claim	Settlement	Post settlement
		Delayed funding Could involve a process determining who is to be paid and how much that isn't known at time of settlement.	
		MSA Has the threshold for review been met? $25,000 for Medicare beneficiary; $250,000 threshold if reasonable expectation of becoming a Medicare beneficiary	
		Submission If applicable, submit MSA to CMS for review and approval.	
		Final demand Following CMS approval, checking to see if any outstanding conditional payments.	
		Settlement language	
		Updating Section 111 TPOC, ORM termination, ICD codes	

Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Actions needed during…

Onset of claim

Settlement

Post settlement

What if Medicare denies beneficiary's benefits?

- If Medicare has determined its interests weren't adequately considered.
- Beneficiary hasn't exhausted MSA funds or improperly used funds.

What if conditional payments come in post settlement? Who is responsible?

- Did settlement language anticipate or specify what happens?

Professional admin to preserve the funds

Funding the annuity

Reversionary clauses

Optum

Key data drives in MSP compliance

	Section 111 Mandatory Insurer Reporting	Conditional Payments	Medicare Set Asides
Responsible Reporting Entity **RRE**	Is the company Medicare has identified as the responsible party for this claim i.e., Carrier or Self Insured Employer	Will receive notification of demands and any unpaid demands will be taken in the form of Offset from the RRE	Can be responsible for payments made by Medicare post settlement due to an underfunded MSA
Ongoing Responsibility of Medical **ORM**	Notifies Medicare of the RREs responsibility of the claimants treatment related to the ICD codes reported and populating a termination date notifies Medicare when the RRE is no longer responsible for the treatment of the claimant	As long as ORM remains open, the CRC will continue to seek reimbursement from the RRE	Should terminate after the MSA allocation is approved and the claim has settled to terminated the RREs responsibility
ICD Codes **ICD**	Are reported to Medicare to indicate the accepted injuries	All codes reported will be included in the CRCs recovery efforts, even codes reported in error	MIR **ICD** codes should be consistent with the MSA allocated conditions unless carrier/TPA inadvertently paid for unrelated conditions, which will be included by CMS in the MSA as a counter high.
Total Payment Obligation to Claimant **TPOC**	Notifies Medicare of the complete sum of money paid to the claimant to settle claim	Upon submission of the TPOC and the termination of ORM, the debtor moves from the RRE to the claimant.	Will include the amount of money designated in the MSA as part of the settlement funds
Date of Injury **DOI**	CMS DOI is the date of the accident/incident or the date of first exposure	Is used by Medicare to set up individual demands. For each date of injury there will be a separate recovery effort by the CRC and BCRC	A global settlement involving multiple **DOIs** may be included within one MSA. Each DOI and ICDs reported via MIR must be consistent with MSA allocation

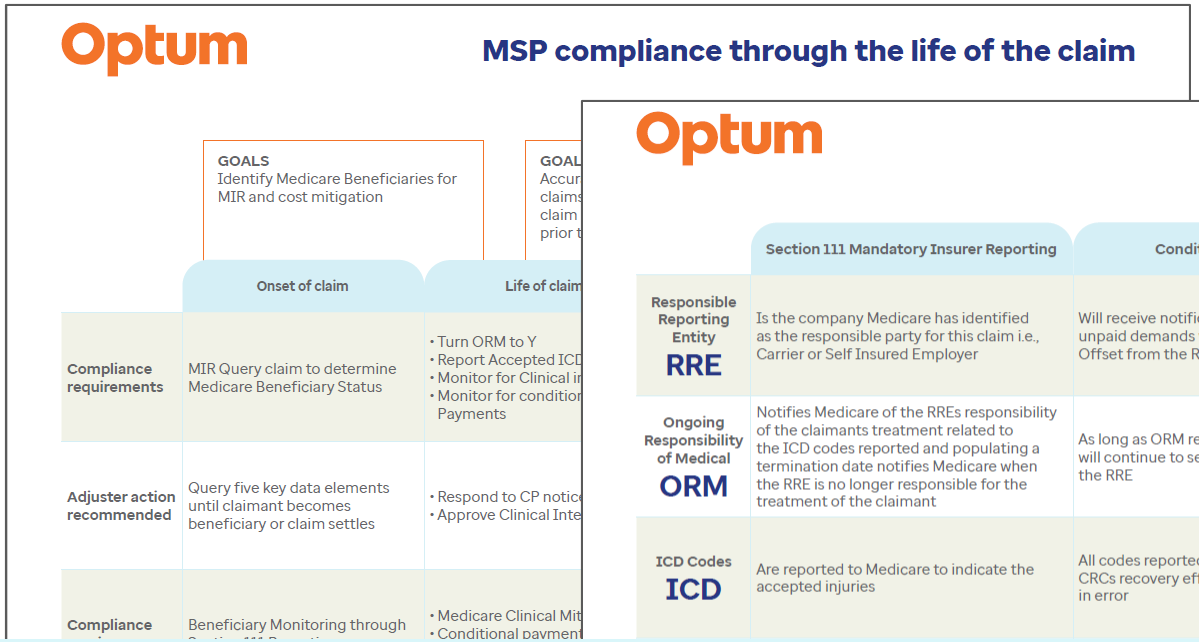
Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

MSP Compliance Resource

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Print these resources to help with MSP compliance


Optum

MSP compliance through the life of the claim

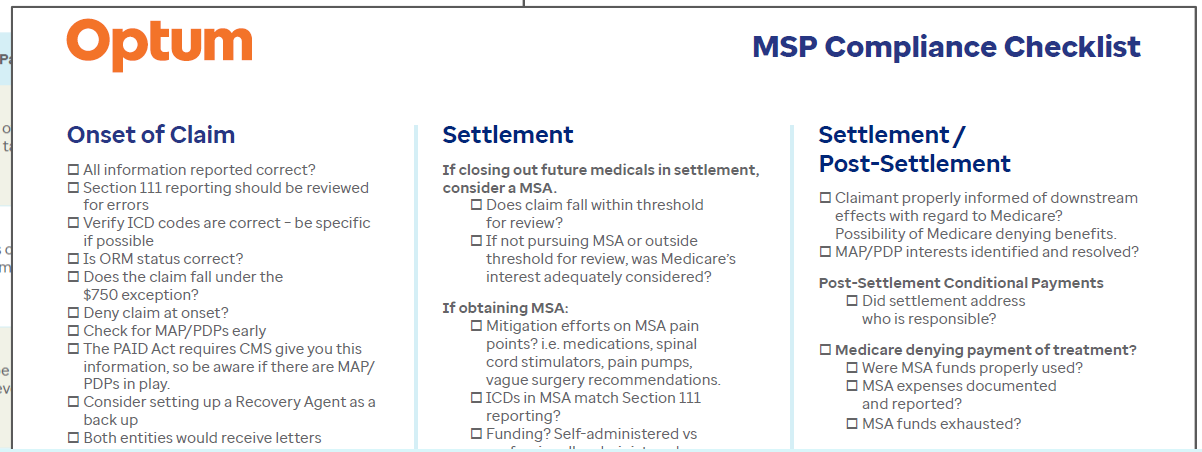
GOALS
Identify Medicare Beneficiaries for MIR and cost mitigation

	Onset of claim	Life of claim
Compliance requirements	MIR Query claim to determine Medicare Beneficiary Status	• Turn ORM to Y • Report Accepted ICD • Monitor for Clinical i • Monitor for condition Payments
Adjuster action recommended	Query five key data elements until claimant becomes beneficiary or claim settles	• Respond to CP notic • Approve Clinical Inte
Compliance	Beneficiary Monitoring through	• Medicare Clinical Mit • Conditional payment

Optum

Key data drives

	Section 111 Mandatory Insurer Reporting	Conditional P
Responsible Reporting Entity RRE	Is the company Medicare has identified as the responsible party for this claim i.e., Carrier or Self Insured Employer	Will receive notification o unpaid demands will be t Offset from the RRE
Ongoing Responsibility of Medical ORM	Notifies Medicare of the RREs responsibility of the claimants treatment related to the ICD codes reported and populating a termination date notifies Medicare when the RRE is no longer responsible for the treatment of the claimant	As long as ORM remains o will continue to seek reim the RRE
ICD Codes ICD	Are reported to Medicare to indicate the accepted injuries	All codes reported will be CRCs recovery efforts, ev in error


Optum

MSP Compliance Checklist

Onset of Claim

- ☐ All information reported correct?
- ☐ Section 111 reporting should be reviewed for errors
- ☐ Verify ICD codes are correct – be specific if possible
- ☐ Is ORM status correct?
- ☐ Does the claim fall under the $750 exception?
- ☐ Deny claim at onset?
- ☐ Check for MAP/PDPs early
- ☐ The PAID Act requires CMS give you this information, so be aware if there are MAP/PDPs in play.
- ☐ Consider setting up a Recovery Agent as a back up
- ☐ Both entities would receive letters

Settlement

If closing out future medicals in settlement, consider a MSA.

- ☐ Does claim fall within threshold for review?
- ☐ If not pursuing MSA or outside threshold for review, was Medicare's interest adequately considered?

If obtaining MSA:

- ☐ Mitigation efforts on MSA pain points? i.e. medications, spinal cord stimulators, pain pumps, vague surgery recommendations.
- ☐ ICDs in MSA match Section 111 reporting?
- ☐ Funding? Self-administered vs

Settlement / Post-Settlement

- ☐ Claimant properly informed of downstream effects with regard to Medicare? Possibility of Medicare denying benefits.
- ☐ MAP/PDP interests identified and resolved?

Post-Settlement Conditional Payments

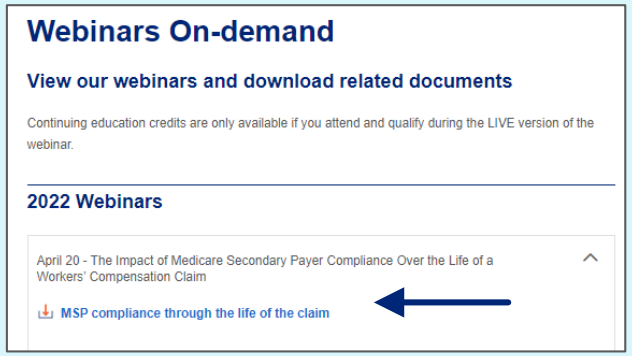
- ☐ Did settlement address who is responsible?

☐ **Medicare denying payment of treatment?**

- ☐ Were MSA funds properly used?
- ☐ MSA expenses documented and reported?
- ☐ MSA funds exhausted?

Resources are available on the Optum Webinars On-Demand page.

https://workcompauto.optum.com/content/owca/owca/en/resources/webinars-on-demand.html


Webinars On-demand

View our webinars and download related documents

Continuing education credits are only available if you attend and qualify during the LIVE version of the webinar.

2022 Webinars

April 20 - The Impact of Medicare Secondary Payer Compliance Over the Life of a Workers' Compensation Claim

MSP compliance through the life of the claim

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.

Thank you!

You will receive an email from the CEU Institute on our behalf within 48 hours after the webinar. This email will contain a link that you will use to submit for your CE credits. (Make sure you check your junk mail!)

You must complete this task within 72 hours.

CE credits for this course are administered by the CEU Institute. If you have any issues or questions regarding your credits, please contact rosters@ceuinstitute.net.

Optum

CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 04/20/2022.