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Related Change Request (CR) #: 5332

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Related CR Transmittal #: R57MSP & R1088CP

Implementation Date: January 2, 2007

Important Note: See special edition article SE0703, which contains important information regarding the M2 (Medicare Secondary Payer) modifier that must be used in certain circumstances. The information in SE0703 overrides the information in this article relating to the use of the M2 modifier, instead of J3, in those circumstances, effective January 1, 2007. SE0703 is available at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/SE0703.pdf> on the CMS site.

Instructions for the Coordination of Medicare Secondary Payer (MSP) claims for the Competitive Acquisition Program (CAP)

Provider Types Affected

Physicians who bill Medicare Carriers and Part A/B Medicare Administrative Contractors (A/B MACs) for drugs paid under the CAP program.

Background

This article and related change request (CR) 5332 provides additional details, information and instructions for CAP MSP claims and instances in which a beneficiary's MSP status is incorrectly determined. Section 303 (d) of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 established section 1847B of the Social Security Act requiring the implementation of a competitive acquisition program (CAP) for Medicare Part B drugs and biologicals not paid on a cost or prospective payment system basis. Beginning with drugs administered on or after July 1, 2006, physicians are given a choice between buying and billing these drugs for beneficiaries with Medicare as their primary insurer under the average sales price (ASP) system or obtaining these drugs from vendors selected through a competitive bidding process.

Participating CAP physicians agree to obtain all drugs included in the CAP drug category for Medicare beneficiaries who do not have another primary insurer from the approved CAP vendor. However, Medicare statutes allow for limited exceptions to this requirement.

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One such exception includes Medicare Secondary Payer (MSP) situations. Section 1862(b) establishes provisions for Medicare as a secondary payer that are codified in 42 CFR Part 411. Section 1862(b) (6) specifically instructs physicians and other suppliers to identify, from information obtained from the beneficiary, payers primary to Medicare and to bill such payers prior to billing Medicare.

This CR instructs carriers to continue allowing CAP physicians to obtain physician administered drugs from entities approved by the primary plan and bill the primary payer outside the CAP vendor when Medicare beneficiaries have other insurance primary to Medicare.

Note: the term “carrier” also refers to A/B MACS as those entities replace carriers as part of Medicare’s contracting reform implementation.

Key Points

When drugs are obtained through the CAP for beneficiaries with insurance primary to Medicare:

- Where a CAP provider renders drugs covered under the CAP to a Medicare beneficiary, who has other coverage primary to Medicare, the provider and the CAP vendor must first bill the appropriate primary insurer for the drug and the administration service.
- In situations where the participating CAP provider and the approved CAP vendor determined that Medicare was the primary payer and ordered and administered the drugs through the CAP, but before Medicare paid the claim, learned that another payer was primary to Medicare, the approved CAP vendor and the participating CAP physician should first bill the primary payer.
- In both of the preceding situations, CAP providers should submit all MSP claims for drug administration services (even if they believe no balance is due).
- Upon receipt of the primary insurer’s payment, MSP claims should then be submitted by the physician to the local carrier for the administration service and by the CAP vendor to the CAP designated carrier for the drug.
- Remember that your Medicare carrier will return all CAP MSP claims from CAP providers as unprocessable if the claim does not contain a prescription number and an applicable CAP no pay modifier with the following message: *RA Remark Code MA130 – Your claim contains incomplete or invalid information, and no appeals rights are afforded because the claim is unprocessable. Please submit a new claim with the complete/correct information.*

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When drugs are obtained outside of the CAP for beneficiaries with Medicare:

- CAP providers should report the CAP MSP modifier on each MSP claim drug line when the participating CAP provider obtained a CAP drug outside of the CAP program because the provider determined that another insurer was primary to Medicare but when the claim processed it was determined that Medicare was primary.
- CAP providers should use the “J3” modifier temporarily until a specific CAP MSP modifier is created.
- Participating CAP physicians are required to maintain documentation in the beneficiary’s medical record to provide further information on why they determined that Medicare was secondary to another payer. The local carrier may request the physician provide this documentation for their review purposes.
- Be aware that local carriers will deny claims when a primary Medicare claim is received and MSP is indicated in Medicare’s records unless the CAP MSP modifier is used.
- If Medicare paid as primary and the CAP provider later learns that there is another primary payer to Medicare, the physician is obligated to notify Medicare by contacting the Coordination of Benefits Contractor and provide them with the MSP information.

Implementation

The implementation date for this instruction is January 2, 2007

Additional Information

For complete details including the revised sections of Chapters 3 and 5 of the *Medicare Secondary Payer (MSP) Manual* and the revised sections of Chapter 17 of the *Medicare Claims Processing Manual*, please see the official instruction, CR5332, issued to your Medicare Carrier or A/B MAC regarding this change. That instruction may be viewed by going to

<http://www.cms.hhs.gov/Transmittals/downloads/R57MSP.pdf> and <http://www.cms.hhs.gov/Transmittals/downloads/R1088CP.pdf> on the CMS website.

For additional information about the implementation of the CAP program you may want to review the following *MLN Matters* articles on the CMS website.

- MM4404 (MMA Competitive Acquisition Program (CAP) for Part B Drugs Physician Election) at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM4404.pdf> on the CMS

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website.

- MM4309 (MMA - Additional Requirements for the Competitive Acquisition Program (CAP) for Part B Drugs and Biologicals) at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM4309.pdf> on the CMS website.
- MM5079 (Competitive Acquisition Program (CAP) - Creation of Automated Tables for Provider Information, Expansion of CAP Fee Schedule File Layout, and Additional Instructions for Claims Received from Railroad Retirement Board Beneficiaries) at <http://www.cms.hhs.gov/MLNMattersArticles/downloads/MM5079.pdf> on the CMS website.

If you have questions, please contact your Medicare Carrier or A/B MAC at their toll-free number which may be found at:

<http://www.cms.hhs.gov/MLNProducts/downloads/CallCenterTollNumDirectory.zip> on the CMS website.

Flu Shot Reminder

It's Not Too Late to Get the Flu Shot. We are in the midst of flu season and a flu vaccine is still the best way to prevent infection and the complications associated with the flu. But re-vaccination is necessary each year because the flu viruses change each year. Encourage your Medicare patients who haven't already done so to get their annual flu shot and don't forget to immunize yourself and your staff. **Protect yourself, your patients, and your family and friends. Get Your Flu Shot. It's Not Too Late!** Remember - Influenza vaccination is a covered Part B benefit. Note that influenza vaccine is NOT a Part D covered drug. For more information about Medicare's coverage of adult immunizations and educational resources, go to CMS's website:

<http://www.cms.hhs.gov/MLNMattersArticles/downloads/SE0667.pdf>.

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