



Understanding Legislative Changes to Coordination of Benefits Practices for Medicaid and CHIP Programs

HCCA Managed Care Conference

January 29, 2019

Agenda

- 1. Coordination of Benefits (COB) /
Third Party Liability (TPL)**
 - Overview
 - Legal Authority
- 2. Recent COB / TPL Changes**
 - 2018 Bipartisan Budget Act
 - State Changes
- 3. Ensuring Compliance**
- 4. Additional Opportunities to
Improve COB / TPL**

About HMS

The leading healthcare cost containment company in the nation

Headquarters: Irving, Texas

Customers:

325+ health plans

40+ state Medicaid programs

225+ employers

Federal agencies (including CMS and VA)

Employees: 2,500 healthcare professionals, including 350 clinicians and 1,100 IT and security staff

Financial: NASDAQ: HMSY

HMS Confidential. Do not Distribute.



Coordination of Benefits
Ensuring the correct party pays healthcare claims



Payment Integrity
Fraud, waste and abuse identification and prevention



Total Population Management
Risk Intelligence, Care Management and Consumer Engagement

3

COB / TPL Expertise

healthcare100
informatics

Gartner
HITRUST



1. **Market Leader:** 300 health plans, 40+ state Medicaid agencies use HMS' COB solutions
2. **Most Advanced Technology:** Leveraging artificial intelligence, machine learning, robotics and other advancements
3. **Robust Data:** Over 1,250 data trading partners
4. **Quality:** 99.99% accurate match rate
5. **Compliance:** Expert government relations / policy analysis function
6. **Results:** Billions saved and recovered annually

HMS Confidential. Do not Distribute.

4

Coordination of Benefits Third Party Liability

HMS Confidential. Do not Distribute.

5

What is COB / TPL?

- By law, Medicaid is “**the payer of last resort**,” which means if a Medicaid recipient is covered by another healthcare plan or program, that plan must pay prior to Medicaid to the extent of its liability
- Ensuring that Medicaid is the payer of last resort is known as third party liability (TPL) or coordination of benefits (COB)



HMS Confidential. Do not Distribute.

Legal Authority The Social Security Act (SSA)

Third Parties

Group health plans
Self-insured plans
Managed care organizations
Pharmacy benefit managers
Medicare
Court-ordered health coverage
Settlements from a liability insurer
Workers' compensation
Long-term care insurance
Other state or Federal coverage programs (unless specifically excluded by law)

§1902(a)(25) of the SSA requires states or local agencies to *“take all reasonable measures to identify legally liable third parties... to pay for care and services”* provided to Medicaid recipients.

Predicated on mandatory assignment of rights to payments for medical support and other medical care owed to recipients - §1902(a)(45).

Prohibits TPL discrimination.

HMS Confidential. Do not Distribute.

7

Why is TPL Important?

1. An individual may have **both Medicaid coverage and private** health insurance coverage
2. Approximately **10% of Medicaid members have other insurance** coverage
3. By state and federal law, **all other available third party resources must be used before the Medicaid program pays** for the care of an individual eligible for Medicaid
4. Every year, the **Medicaid program saves billions of dollars** by avoiding and recovering healthcare expenses that are the responsibility of another healthcare payer



HMS Confidential. Do not Distribute.

8

Components of an Effective Coordination of Benefits Program



Pre Payment TPL Identification Process

High accuracy data match and validation process to identify members' other insurance that can be used to cost avoid claims

Post Payment Recovery

Overpayment recovery process to recoup payments made prior to the knowledge of other available insurance. Elements of the recovery process should encompass providers, carriers, and PBMs

Subrogation

Recoveries from settlement or liability coverage due to accidents and injuries or negligence of another party. Examples include automobile accidents, class action lawsuits and drug settlements

Claims Audit

Credit balance audit programs that review claims either internally or onsite with providers

Coordination with Medicare (CMS data, Medicare Advantage) -

Estates Recovery (If delegated)

Recoveries from deceased members' estates based upon contractual conditions of enrollment into the long term care program

Health Insurance Premium Payment (if delegated)

Payment and enforcement of other insurance policies for high cost members when deemed cost effective using the state's approved cost effective determination criteria

TPL in a Medicaid Managed Care Environment

- 4 Basic TPL Models
 - Exclude members with TPL from managed care
 - Include members with TPL
 - State retains TPL responsibilities
 - State delegates some or all TPL responsibilities to MCOs
 - When TPL responsibilities are delegated to an MCO, third parties are required to treat the MCO as if it were the State
- MCO contracts with States detail TPL responsibilities
 - Delegation model
 - Technical and operational specs
 - Identification and recovery time frames and right
 - Reporting
 - State oversight

Recent Legislative Updates

HMS Confidential. Do not Distribute.

11

The Deficit Reduction Act Impact on TPL

1. Strengthens state's ability to identify and collect payments by:

- **Amending the SSA to clarify the definition of insurer** to include self-insured plans; group health plans; MCOs; pharmacy benefits managers; and others
- **Compelled insurance carriers to:**
 - **Provide health benefit information to Medicaid** and/or its agent for purposes of coordinating benefits
 - **Make payment** as long as the claim is submitted by the state within three years of the date of service
 - **Agree not to deny a claim** as long as the state commenced action on the claim within six years of the state's submission of the claim

2. Requires states to pass DRA-compliant laws that **protect/enforce Medicaid's payer of last resort status** by identifying other coverage, avoiding inappropriate payments and recovering payments made in error



**Enacted by
Congress in
2005**

HMS Confidential. Do not Distribute.

12

State DRA-Compliant Laws, Rules, Policies, Waivers

State DRA-Compliant Laws / Regulations

- States must pass DRA-compliant laws and / or regulations

State Plan Requirements

- State Plans must include specific information and assurances related to COB/TPL

TPL Action Plans

- The State Medicaid Agency must develop and submit a TPL action plan to the CMS Regional Office

Waiver of Requirements

- State Medicaid Agencies may request waivers for TPL requirements if it is determined/ demonstrated that the activity is not cost-effective.



HMS Confidential. Do not Distribute.

13

2018 Bipartisan Budget Act (BBA) Changes

1. Section 53102: *Third Party Liability (TPL) in Medicaid and CHIP* strengthens Medicaid TPL rights and applies TPL requirements to the CHIP program
2. Applies §1902(a)(25) of the Social Security Act (SSA) to CHIP
 - Data sharing
 - Claims processing
 - Lookback periods



Signed by President Trump
February 9, 2018

HMS Confidential. Do not Distribute.

14

Additional BBA Changes

- 1. Prenatal Services Cost Avoidance** - requires a state to cost avoid for prenatal services and to collect information on third party liability before making payments
- 2. Claims Payment** - 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
- 3. Lien Rights** - Holds Medicaid lien rights to the medical portion of the settlement only - Retrospective effective date, Oct. 1, 2017

HMS Confidential. Do not Distribute.

15

Bicameral TPL Legislation – H.R. 938/S.B. 2027

1. H.R. 938, Medicaid Third Party Liability Act

- Sponsored by Congressman Burgess
- Co-sponsored by Flores (R-TX) and Guthrie (R-KY)

2. S.B. 2027, Medicaid Third Party Liability Act

- Companion bill to H.R. 938
- Sponsored by Senator Portman
- Contains many of the same provisions included in H.R. 3922

Failed to receive further consideration in first committees of referral: House Energy and Commerce, Senate Finance



Sen. Rob Portman
(R-OH)



Rep. Mike Burgess
(R-TX)

HMS Confidential. Do not Distribute.

16

Key Tenets H.R. 938/S.B. 2027

1. **Captures Additional Liable Parties:** Adds TRICARE, fully insured plans, accountable care organizations and “any other health plan determined appropriate by the Secretary” to the list of liable parties
 - **Closes the out of state insurer loophole**
 - **Other Considerations:** HSAs and HRAs, TPAs, AHPs, STLDI, workers compensation, automobile and other liability policies.
2. **Prompt Payment:** 60-day response
3. **Prior Authorization:** Prohibits denials for a lack of prior authorization and requires acceptance of Medicaid’s medical necessity determination
4. **Codifies MCO TPL Authority:** Transfers state data access and recovery rights when TPL is delegated

HMS Confidential. Do not Distribute.

17

Additional Provisions in H.R. 938 / S.B. 2027

1. Grants TPL authorities to CHIP
2. Eliminates CAV exclusion for EPSDT and child support
3. Clarifies the treatment of FMAP
4. Standardizes state TPL reporting
5. Requires HHS to publish training, best practices and monitor challenges
6. Subjects states to FMAP withholds for noncompliance

HMS Confidential. Do not Distribute.

18

Missouri Estate Recovery Improvements: SB 806

Effective August 28, 2018

New law **establishes debts for medical assistance** in the 6th position of the priority list for estate recovery purposes. Prior to the bill's passage, medical assistance debts were not included in the priority list at all.



Ensuring Compliance

Why Compliance Matters

- Maximize member access
- Capture commercial rates for providers
- Protect personal health information
- Ensure fiscal soundness
- Avoid stakeholder abrasion
- Protect Federal Matching Assistance Percentage
- Prepare for State and Federal oversight



HMS Confidential. Do not Distribute.

An Environment of Oversight



Top Management Challenge:

Effectively Administering the Medicaid Program to Improve Oversight of Managed Care, Address High Improper Payments, and Strengthen Program Integrity.

TPL Payment Collections in Medicaid Study Pending



June Program Integrity Strategy



Homeland Security & Governmental Affairs

Senate Finance Committee



Medicaid is on the GAO High Risk List

HMS Confidential. Do not Distribute.

22

Complying with COB / TPL Laws

- 1. Understand your Contractual agreements as it pertains to TPL**
 - Global contractual flow downs; compliance with Medicaid state and federal rules
 - Line item delegations
 - Premium offsets
- 2. Develop a matrix of requirements based on membership category of aid (COA)**
- 3. Establish benchmarks for performance and compliance**
- 4. Determine if any audit rights exist –State and Federal**
- 5. Understand potential penalties and audit processes**
 - Samples sizes and extrapolations
- 6. Engage business partners and ensure appropriate stakeholder communications**
- 7. Monitor rule changes at both Federal and State levels**
- 8. Conduct self-audit of performance in alignment with State TPL Action Plan**

HMS Confidential. Do not Distribute.

23

Additional Opportunities to Improve COB / TPL

HHS Office of Inspector General 2013 Report

Key Challenges

- States encounter challenges getting third parties to pay when they are responsible; leading to hundreds of millions of dollars in losses per year
- Challenges should be addressed at the state-level

Key Take-Aways

- \$4 billion at risk of not being recovered
- Increases in recoveries can be actualized by improving state DRA-compliant laws
- Improvements to the TPL process facilitates increased savings
- Assistance from contractors facilitated improvements in their identification / recovery efforts
- Strengthen enforcement mechanisms to deal with uncooperative third parties



Study of state trends in Medicaid TPL savings over a decade

25

U.S. Government Accountability Office Medicaid TPL 2015 Report

Key Challenges

- Obtaining out-of-state coverage data
- Insurers conducting insurer-driven data matches
- Obtaining key data elements
- Timeliness of data matches

Key Take-Aways

- State minimum standards ineffective
- Federal DRA addresses some of the problems reported by states, but doesn't go far enough
- States have experienced significant increases in recovery and savings from adopting TPL best-practices



TPL performance from eight case study states between 2013 – 2015

26

Improving and Maximizing Medicaid COB / TPL Recovery For Your State or Plan

- Medicaid programs often pay claims for which a third party is liable because they lack information necessary to identify other coverage
- Federal law (DRA) requires states to have laws in place to strengthen the TPL identification and recovery process
- Respective state statute and regulations contain many of the elements required by the Federal DRA, but should be modernized to reflect evidence-based practices for maximizing recovery
- Absent stronger State DRA language, millions of dollars in savings remain at-risk

27

Best-Practices to Improve and Maximize TPL Recovery: State Initiatives

COMPEL COOPERATION

- Reflect Federal statute and ensure the definition of Third Party is sufficiently broad
- Empower MCOs with right to recovery
- Apply penalties for DRA noncompliance

ENHANCE DATA ELEMENTS

- Require comprehensive data sets
- Require full enrollment files from insurers; closing out state carrier loophole
- Require insurers to share Eligibility files at least monthly

CLARIFY PARAMETERS FOR CLAIMS PAYMENTS

- Prohibit out of network denials
- Prohibit denials related to prior authorization
- Ensure timely claims processing
- Limit carrier refund periods
- Extend disallowance periods and provider timely filing

28



Moving healthcare forward.

Kristen Ballantine, VP Government Relations
kballantine@hms.com

Ron Singh, SVP Advisory Services
rsingh@hms.com



hms.com

© 2018 HMS Corporation. All rights reserved.

TPL References

Federal Statutes/Regulations/Guidance

- 2018 Bipartisan Budget Act
- [CMCS BBA Informational Bulletin](#)
- [Summary of Statutory Requirements](#)
- [Summary of Regulatory Requirements](#)
- [Frequently Asked Question \(2014\)](#)
- [Guide to Effective State Agency Practices \(2014\)](#)
- [Guide to Effective State Agency Practices Update \(2015\)](#)

Reports/Other Materials

- [HHS Office of Inspector General \(OIG\) Report \(2013\)](#)
- [U.S. Government Accountability Office \(GAO\) Report \(2015\)](#)
- [COB/TPL Training/Handbook \(2016\)](#)