Program Memorandum
Intermediaries/Carriers

Department of Health & Human Services (DHHS)
Centers for Medicare & Medicaid Services (CMS)

Transmittal AB-03-088 **Date: JUNE 20, 2003**

This Program Memorandum re-issues Program Memorandum AB-02-095, Change Request 2216, dated July 5, 2002. The only change is the discard date; all other material remains the same.

CHANGE REQUEST 2216

SUBJECT: Prohibition on New Trading Partner Agreements (TPAs) with Certain Entities for the Purpose of Coordination of Benefits (COB)

Currently, you execute TPAs with a host of third party payers (also known as trading partners), including Medicare supplemental (i.e., Medigap) insurers, employer retiree health plans, as well as State Medicaid Agencies (SMAs), for the purpose of exchanging adjudicated Medicare claims for secondary liability determination by those partners. This exchange of data is commonly referred to as the "claims crossover process." The Centers for Medicare & Medicaid Services (CMS) is issuing this Program Memorandum (PM) to formalize its policy regarding the types of entities with whom you may and may not enter into TPAs for the purpose of crossing over adjudicated Medicare claims data and to explain how CMS will implement the policy over time.

Effective with the date of this PM, you are not to enter into new TPAs for the purpose of COB (claims crossover) with non-insurer entities, such as healthcare clearinghouses, third party administrators, or administrative service organizations (ASOs). It is CMS's position that TPAs for the purpose of COB are to be between you and individual supplemental insurers. CMS is ultimately phasing out TPAs with non-insurer entities. Therefore, a prohibition on entering into new agreements with non-insurers represents an important first step towards meeting that objective. In accordance with this new policy, TPAs for COB purposes should be executed with Medicare supplemental insurers (including Medigap plans), employer retiree health plans, self-insured plans, multiple employer welfare trusts, managed care organizations, SMAs, and other insurance entities that provide protection against the medical expenses of their insured population.

The above policy does not, however, preclude TPA parties, as named above, from subcontracting file exchange activities—including submission of eligibility files and receipt of outbound COB files—to non-insurer entities, such as healthcare clearinghouses. Thus, you may continue to receive incoming eligibility files from and send outgoing COB files to healthcare clearinghouses or third party administrators that work under contract with various supplemental insurers. In these cases, the trading partner (insurer) must identify its contractors/subcontractors and require any entity with whom it contracts for COB purposes, or any contractor or subcontractor thereof, to comply with all applicable data privacy/security/disclosure requirements found in the TPA that you have executed with that insurer. Insurer trading partners will be held accountable for ensuring that all individually identifiable Medicare beneficiary data that are received on their behalf by these non-insurer entities for COB purposes are adequately safeguarded and protected per the terms of the agreement and in accordance with the Standards for Privacy of Individually Identifiable Health Information under the Health Insurance Portability and Accountability Act of 1996.

CMS is currently developing a standard TPA that you will eventually be required to use for new and renegotiated agreements with employer retiree health plans, self-insured plans, Medigap insurers and other Medicare supplemental plans, SMAs, and related insurer entities. The standard TPA will appropriately address disclosure responsibilities of the insurers with whom you exchange crossover data. We anticipate releasing the standard TPA for the purpose of COB to you via a forthcoming PM. This PM will provide details about the phased implementation of the standard TPA, together with instructions about the next steps you should take and deadlines by which you must terminate existing TPAs with non-insurer entities.

Use of Your Existing TPA Documents

You may continue to use your existing TPAs when negotiating and executing new TPAs with insurers or renewing existing TPAs until CMS issues its standard TPA.

We realize that this instruction may raise a number of questions about various scenarios that you may encounter, or already are encountering, in terms of TPA executions. The following should address some of these questions:

1. What if a new insurer approaches us to enter into a new TPA?

When approached by a new insurer that wishes to enter into a TPA to receive Medicare crossover claims, you should continue to use your own customized TPA but must modify the agreement to add a clause that allows for termination of the agreement by either party with at least 60 days advanced notice.

2. How should we handle clearinghouse requests to enter into new TPAs?

You are not to enter into a new agreement with any non-insurer entity (e.g., healthcare clearinghouse, third party administrator, or ASO) that approaches you for this purpose. Inform the clearinghouse or affected non-insurer about the new policy contained in this PM regarding appropriate crossover trading partners. Advise the clearinghouse or affected non-insurer to consult with its insurer clients about their working with you to amend or execute new TPAs that would document the contractor/subcontractor relationship.

3. What about renewal of existing TPAs with insurers?

You may need to renew TPAs with insurers prior to the issuance of CMS's standard TPA. Continue to use your own customized TPAs for this purpose. Many of your TPAs automatically renew and contain clauses that allow for termination by either party to the agreement with 90 days advance notice. If, however, your agreements do not automatically renew or contain a termination clause that allows for at least 60 days advance notice, you should add a clause within your renewal TPAs that allows for termination by either party to the agreement with 60 days advance notice.

4. How should we handle renewal of existing TPAs with clearinghouses, third party administrators, or ASOs?

You may need to renew existing TPAs with healthcare clearinghouses and other non-insurers prior to the issuance of CMS's standard TPA. Before CMS issues the standard TPA, honor all existing TPAs for renewal with these non-insurer entities. Unless your TPAs with non-insurers automatically renew or already contain termination clauses that allow for at least 60 days advance notice, you should add a clause within these renewal TPAs that allows for termination by either party to the agreement with 60 days advance notice. Advise the non-insurer of the forthcoming prohibition and also refer that party to the information contained in this PM.

5. In the future, will each individual insurer that was formerly covered under a TPA you entered into with a clearinghouse or third party administrator need to sign individual TPAs?

Today, many healthcare clearinghouses and third party administrators do business with multiple supplemental insurers. CMS realizes that direct negotiation of multiple TPAs with these insurers may increase administrative burden. CMS will consider allowing you to receive one executed copy of the standard TPA that would contain the signatures of multiple insurers that do business with the same clearinghouse or third party administrator (i.e., multiple copies of the signature page). In all cases where insurers use a clearinghouse or third party administrator, that entity must be appropriately identified within the appropriate attachment section of the standard TPA. This policy will be further clarified with the issuance of the instruction to implement the standard TPA.

The *effective date* for this PM is July 5, 2002.

The *implementation date* for this PM is July 5, 2002.

These instructions should be implemented within your current operating budget.

This PM may be discarded after June 1, 2004.

If you have any questions, contact Brian Pabst, 410-786-2487, or Richard Cuchna, 410-786-7239.