
Program Memorandum

Intermediaries/Carriers

Department of Health and
Human Services (DHHS)
HEALTH CARE FINANCING
ADMINISTRATION (HCFA)

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CHANGE REQUEST 1142

SUBJECT: Medicare Secondary Payer (MSP) Government Performance and Results Act (GPRA) Goal for Fiscal Year (FY) 2000

The MSP GPRA goal for FY 2000 requires an increase in liability and no-fault recoveries of five percent (5%) and requires that HCFA develop a methodology for measuring liability and no-fault recovery leads. This Program Memorandum (PM) provides: (1) general information about this GPRA goal; (2) the minimum requirements for contractor MSP liability and no-fault outreach; and (3) contractor instructions for tracking liability and no-fault leads.

General Information

All Medicare contractors are obligated to work toward increasing liability and no-fault recovery leads which will, in turn, increase recoveries in these areas. The instructions set forth below are to ensure that contractors have in place appropriate outreach efforts for MSP liability and no-fault recoveries and that they implement appropriate procedures for tracking liability and no-fault leads. We are also looking for contractor suggestions and "best practices" to decrease backlogs and increase contractor efficiencies in these areas.

In the past, some contractors have used the term "liability" generically. For example, the MARTI system is often referred to generically as a liability system although it also includes no-fault and workers' compensation cases (it also separately tracks cases under the categories of liability, no-fault, workers' compensation, and medical malpractice even though medical malpractice is a subcategory of liability).

Liability insurance and no-fault insurance are defined at 42 CFR 411.50(b) as follows:

"Liability insurance means insurance (including a self-insured plan) that provides payment based on legal liability for injury or illness or damage to property. It includes, but is not limited to, automobile liability insurance, uninsured motorist insurance, underinsured motorist insurance, homeowners' liability insurance, malpractice insurance, product liability insurance, and general casualty insurance."

"No-fault insurance means insurance that pays for medical expenses for injuries sustained on the property or premises of the insured, or in the use, occupancy, or operation of an automobile, regardless of who may have been responsible for causing the accident. This insurance includes but is not limited to automobile, homeowners, and commercial plans. It is sometimes called 'medical payments coverage', 'personal injury protection', or 'medical expense coverage'."

These are the definitions that should be used for purposes of this PM.

Contractor MSP Outreach for Liability and No-Fault

Contractors must establish, if not already in place, or continue, an outreach program aimed at the: (1) provider/supplier community (including physicians), (2) beneficiaries, and (3) attorneys (and other representatives). Outreach should include proactive efforts; it should not be limited to responding to inquiries. Outreach to the provider/supplier community should include meetings, if possible, to instruct/refresh providers/suppliers and their staff regarding MSP law, regulations, and other rules and their corresponding obligations under them. Outreach to the beneficiary community should include representatives from the contractor attending various community organization meetings to explain MSP requirements and beneficiaries' obligations in understandable terms. Contractors should also meet, if possible, with attorney organizations and insurers to provide information on MSP laws, regulations, and other rules. Information provided to attorneys (or other representatives) and insurers should include their responsibilities to protect the Medicare trust funds as well as their potential liability if they fail to do so.

Contractors should prepare printed materials for outreach -- for use at meetings, for use in response to requests for information, and for use on any contractor website. Prior to issuance by the contractors, our regional offices (ROs) are responsible for reviewing contractor outreach materials for accuracy and legal sufficiency, and correcting them, if necessary. Printed materials should be suitable for the target audience.

Contractors are not required to conduct MSP outreach separately from other outreach efforts. MSP efforts may be combined with other educational efforts. Additionally, two or more contractors may, with the concurrence of their respective RO MSP coordinators, partner with other contractors to produce written materials. This should assist with the associated workload (drafting materials and RO review) for both contractors and ROs.

Effective October 1, 2000, the Coordination of Benefits (COB) contractor will have responsibility for producing certain MSP outreach materials, primarily with respect to MSP pre-pay issues. These materials will be used by the COB contractor and will also be available to all intermediaries and carriers for their use. However, intermediaries and carriers will continue to have primary responsibility for outreach for all MSP recovery issues, including liability and no-fault recoveries.

Tracking Liability and No-Fault Recovery Leads (Separately)

The following rules are to be used for tracking liability and no-fault recovery leads:

- This requirement must be implemented on May 1, 2000.
- No systems changes are required or authorized for this tracking requirement.
- Contractors must track liability and no-fault leads separately from other MSP leads and from each other (that is, one count for liability and one count for no-fault).
- Contractors are not required to track subcategories of liability or no-fault.
- A lead should be recorded as of the point the contractor has established a potential recovery case. In order to avoid duplication, liability leads will be tracked only by the lead contractor. Consequently, they cannot be tracked until the lead contractor is determined. (Note: Effective October 1, 2000, this will be at the point the COB contractor has updated the CWF and forwarded information on a potential liability or no-fault recovery case to the appropriate lead contractor or where the case has been established under the direction of HCFA central office for a HCFA identified group or class of cases.)
- Where a no-fault case later becomes a liability case (or a liability case later becomes a no-fault case), the case should not be counted a second time. Contractors should determine to the best of their ability whether a recovery lead is a liability or no-fault lead.

- If contractors coordinate on a no-fault case, only the first contractor involved should count the case for purposes of the tracking required by this PM.
- Required tracking, for purposes of this PM, is limited to the number of leads established for each category (that is, tracking is not required beyond the point the lead is established, no other information other than the count is required).
- Tracking may be done manually or on a computer spread sheet.
- Information must be tracked on a daily basis.
- Contractors must have monthly, quarterly, and fiscal year totals available upon request, but are not required to submit any data until requested to do so.
- This tracking requirement is in addition to any existing tracking requirements for MSP leads as a whole; it does not replace any existing requirements.

The availability of this information will allow HCFA to meet the MSP GPRA goal of developing a methodology for measuring liability and no-fault leads. (Although the actual calculation needed to determine whether or not the number of leads for each category is increasing is simple, HCFA has no data to make the necessary calculation until the tracking requirements in this PM are implemented.)

The effective date for this PM is April 14, 2000.

The implementation date for this PM is May 1, 2000.

Contractors must implement the tracking requirements set forth in this PM on May 1, 2000. Contractors who do not have an outreach program in place which meets the requirements of this PM must have an outreach plan no later than May 1, 2000 and must have fully implemented the plan no later than June 1, 2000.

Funding: The liability and no-fault tracking requirements must be implemented under contractors' current operating budget. We will consider supplemental budget requests for MSP funding for **new** outreach activities.

This PM may be discarded June 1, 2001.

For further information concerning this PM, contractors should contact their MSP RO coordinator. ROs may direct questions to Betty Noble at 410-786-6475 or by e-mail at "bnoble@hcfa.gov."