
Program Memorandum Intermediaries/Carriers

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

Transmittal AB-03-108

Date: JULY 25, 2003

CHANGE REQUEST 2715

SUBJECT: Medicare Secondary Payer (MSP) – 1) Use of Inter-Contractor Notices (ICNs) and the Common Working File (CWF) for the Development of the MSP Conditional Payment Amount for Liability, No-Fault, Workers' Compensation, and Federal Tort Claims Act (FTCA) Cases; 2) Reminder Regarding Termination Updates to the CWF; 3) Reminder Regarding Savings Information to Non-Lead Contractors

Background

As a result of the implementation of the Coordination of Benefits Contractor (COBC), lead recovery contractor identification and notification will be done by the COBC; the lead recovery contractor continues to be responsible for the identification and recovery of Medicare's MSP claim. Medicare manual sections cited in the Budget Performance Requirements (BPRs) address the responsibilities of the lead contractor.

The CMS has designated fiscal intermediaries as the leads for all new liability, no-fault, workers' compensation, and FTCA recoveries. Carriers retain the lead for any pre-existing pending cases for which they were the lead recovery contractor prior to the implementation of the COBC.

Prior instructions called for lead recovery contractors to issue ICN requests to all contractors having paid claims related to an identified liability, no-fault, workers' compensation, or FTCA case. The ICN requests are for purposes of developing the conditional payment amount associated with any claims paid by another contractor. Effective October 1, 2002, contractors began to utilize CWF to identify related conditional payments in certain situations.

General Rules for the Use of ICNs vs. CWF for the Development of Medicare's Conditional Payment Amount:

When the date of the accident/injury/illness/incident is within 18 months of the contractor's notification of lead recovery contractor status via COBC, contractors must develop the total conditional payment amount through the use of CWF, rather than ICNs. Where the initial conditional payment amount was obtained through the use of ICNs; but the notice of settlement, judgment, or award is less than 22 months from the date the initial conditional payment amount was furnished, the lead recovery contractor will obtain updated amounts through the use of CWF. Where workload permits, the lead recovery contractor should update the conditional payment amounts near the end of the expiration of the 22-month period in order to avoid the need for an ICN at the time of settlement, judgment, or award. When obtaining claims information from the CWF, the lead recovery contractor must retrieve archived claims via the appropriate command (i.e., MSPA, MSPB, INPL, OUTL, etc.). If the data is purged and the lead recovery contractor has the ability to retrieve it, they must do so. Contractors have been furnished with OSCAR access (for institutional provider information), the UPIN directory disc (for physician, nurse practitioner, clinical nurse specialists, and physician assistant information), and with a process to gain access to the National Supplier Clearinghouse (NSC) (for DMEPOS supplier information).

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Where the date of accident/injury/illness/incident in comparison to the lead notification via COBC is greater than 18 months, the lead recovery contractor will send ICNs to the non-lead contractors. Non-leads must respond to the ICN request within 45 days from receipt, except in response to a notice of settlement, judgment, or award. Non-lead contractors have 30 days to respond to a notice of settlement, judgment, or award ICN if they had no prior ICN request; and 15 days to respond if the ICN request is a request to update the conditional payment amount previously received. Where the time span between the development of the initial conditional payment amount and notification of a settlement, judgment, or award exceeds 22 months, the lead recovery contractor may develop the updated conditional payment amount by ICN.

All contractors should be aware that because product liability situations are often unknown for some time after the product at issue is first used, many product liability situations are likely to exceed the 18-month time frame for initial notification and will require the use of ICN requests to develop Medicare's conditional payment amounts.

NOTE: The retention period for CWF claims data has been increased to a minimum of 24 months. This change, in conjunction with the rules stated above, will allow lead recovery contractors to deal with occasional backlog situations. Even where the initial notification of an accident/injury/illness/incident is near the end of the 18-month period, contractors will have adequate time to develop the conditional payment amount without the need for ICNs.

Miscellaneous ICN Issues:

ICN requests by the lead recovery contractor when the 18-month period has not expired: Non-lead contractors do not need to respond to ICN requests sent within the 18-month period. They should annotate such ICNs with the reason the ICN is not being processed and immediately return the ICN to the lead contractor (to ensure that the lead contractor can obtain the information from CWF while it is still available). If a non-lead contractor experiences repeated problems with this issue from a particular lead contractor, they should notify their regional office (RO).

ICN backlog issues: If an ICN backlog (for issuing and/or replying to ICN requests) develops, contractors are required to report the situation to their RO MSP Coordinator immediately, provide a plan for elimination of the backlog, and obtain RO approval of the plan. The plan for eliminating an ICN backlog must involve simultaneously working both new and old lead assignments in order to minimize the number of ICNs that must be issued. Non-lead contractors must respond to ICN requests where the 24-month CWF minimum period for claims data retention has expired even if they believe that the issuing contractor should have been able to obtain the information from the CWF before the 24-month period expired. If a receiving contractor is concerned about repeated situations with a particular contractor, it must notify its RO. The RO will ascertain whether the other contractor at issue is in the midst of eliminating a backlog.

ICN request content issues: ICN requests must always provide sufficient information for the non-lead contractor to readily identify if an incoming ICN is an initial request or a follow-up request and whether or not a settlement, judgment, or award has occurred (including the date). ICN requests should also be clearly marked to show that no CWF record exists, in those limited circumstances where a contractor has been directed not to establish a CWF record.

Contractors are reminded that ICN requests must include a narrative description of the accident/injury/illness/incident and/or related diagnosis codes as well as the date of the accident/injury/illness/incident.

ICN responses: Non-lead contractors responding to ICN requests are reminded that ICN responses must specifically annotate/identify all related claims; the non-lead contractor may not simply furnish a "history dump" without further identification of those claims which are related to the

accident/injury/illness/incident. Non-lead contractors are reminded that they must also furnish appropriate claims detail; they may not simply furnish a dollar total for related claims.

Reminder Regarding Termination Updates to the CWF:

When the lead recovery contractor is notified, by writing or via telephone conversation of a settlement, judgment, or award, the date of that settlement, judgment or award should be entered in the termination field of the CWF immediately. The lead recovery contractor must not delay entry of the termination date until the recovery demand letter is issued or until the debt is repaid and the case is closed. Failure to perform a timely update puts the Medicare trust funds at risk.

Reminder Regarding Savings Information to Non-Lead Contractors:

The lead recovery contractor continues to be responsible for reporting appropriate savings amounts to non-lead contractors even where conditional payment amounts were developed using CWF. The lead recovery contractor must furnish sufficient detail with this notification for the non-lead to report appropriate savings and process any necessary claim adjustments. If there is a beneficiary specific recovery in a situation where CMS has determined that a CWF MSP record is not appropriate, all savings should be reported by the lead contractor without any claim adjustments.

There are no system changes associated with this instruction.

This instruction is effective and must be implemented on August 9, 2003, since it reflects existing BPRs.

This instruction must be implemented within your current operating budget.

This PM may be discarded July 31, 2004.

If you have any questions contact your RO MSP Coordinator. ROs may contact Betty Noble at BNoble@cms.hhs.gov.