



CMS Publishes Proposed Rules for Appeal of MSP Conditional Payment Determinations

The Centers for Medicare and Medicaid Services (CMS) on December 27, 2013 published proposed rules with respect to the Right of Appeal for Medicare Secondary Payer Determination Relating to Liability Insurance (including Self-Insurance), No Fault Insurance, and Workers' Compensation Laws and Plans. The proposed rules may be found at <http://www.gpo.gov/fdsys/pkg/FR-2013-12-27/pdf/2013-30661.pdf> and provide for comments to be submitted by February 25, 2014.

An initial review of the proposals identifies the following primary points

1. CMS proposes to use the same basic appeals process for applicable plans as is used for beneficiaries (with identified exceptions)
2. The appeals process only addresses circumstances where the Federal Government is pursuing a direct right of action to recover conditional payments made by Medicare.
3. The proposed rules do not address an appeals process for Workers' Compensation Set-Aside Arrangement (WCMSA) amounts. (CMS indicates that this will be addressed separately)
4. The proposed rules specify that Medicare's determination regarding who/what entity it will pursue with respect to an MSP recovery claim is not an initial determination subject to the appeal process. It is the CMS view that because Medicare has the right to recover conditional payments from the beneficiary, the primary payer, or any other entity that has the proceeds from payment by the primary plan, Medicare's decision regarding who/what entity it is pursuing recovery from is not subject to appeal.