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***CMCS Informational Bulletin***

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Center for Medicaid and CHIP Services (CMCS)

SUBJECT: **Third Party Liability in Medicaid: State Compliance with Changes Required in Bipartisan Budget Act of 2018 and Medicaid Services Investment and Accountability Act of 2019**

The intent of this Center for Medicaid and CHIP Services (CMCS) Informational Bulletin is to advise states of the need to ensure that their Medicaid state plans comply with third party liability (TPL) requirements reflected in current law. The Centers for Medicare & Medicaid Services (CMS) recently completed a review of Medicaid state plans for all fifty states, the District of Columbia, and U.S. territories to ensure compliance with recent changes in statute. CMS found that most states have not yet amended their plans to comply with the TPL requirements authorized under both the Bipartisan Budget Act (BBA) of 2018 (Pub. L. 115- 123) and the Medicaid Services Investment and Accountability Act (MSIAA) of 2019 (Pub. L. 116-16), affecting the BBA of 2013.

The BBA of 2018 includes provisions that modify TPL rules related to special treatment of certain types of care and payment. In addition, the changes made by the MSIAA of 2019 to the BBA of 2013 allow for payment up to 100 days instead of 90 days for claims related to medical support enforcement.<sup>1</sup> CMS issued guidance to states in June of 2018, and again in November of 2019, on these changes in the TPL law (see hyperlinks on the following page). CMS is available to provide technical assistance to states that need to submit Medicaid state plan amendments to comply with the current TPL laws and implement the corresponding operational changes.

**Background:**

Medicaid is generally the “payer of last resort,” meaning that Medicaid only pays for covered care and services if there are no other sources of payment available. Section 1902(a)(25) of the Social Security Act (the Act) requires that states take “all reasonable measures to ascertain the legal liability of third parties.” The Act further defines third party payers to include, among others, health insurers, managed care organizations (MCO), group health plans, as well as any other parties that are legally responsible by statute, contract, or agreement to pay for care and services. The regulations mirror this definition of third parties at 42 CFR § 433.136.

Effective February 9, 2018, the BBA of 2018 amended section 1902(a)(25)(E) of the Act to require a state to use standard coordination of benefits cost avoidance instead of “pay and chase” when processing claims for prenatal services, including labor and delivery and postpartum care

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<sup>1</sup> Medicaid Services Investment and Accountability Act of 2019 (Pub. L. 116-16), Section 7 (effective April 18, 2019)

claims. Therefore, if the State Medicaid Agency (SMA) has determined that a third party is likely liable for a prenatal claim, it must reject, but not deny, the claim and return it back to the provider noting the third party that Medicaid believes to be legally responsible for payment. If, after the provider bills the liable third party and a balance remains or the claim is denied payment for a substantive reason, the provider can submit a claim to the SMA for payment of the balance, up to the maximum Medicaid payment amount established for the service in the state plan.

Additionally, effective October 1, 2019, the BBA of 2018 amended section 1902(a)(25)(E) of the Act, to require a state to make payments without regard to third party liability for pediatric preventive services unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for 90 days. In June 2018, CMS released an Informational Bulletin to provide technical assistance on the key TPL provisions related to the BBA of 2018 that impact Medicaid and CHIP. For reference, the hyperlink is provided here: <https://www.medicaid.gov/federal-policy-guidance/downloads/cib060118.pdf>.

In November 2019, CMS released an additional Information Bulletin to further clarify its guidance and to address changes made by the MSIAA of 2019 to the BBA of 2013, which allow for payment up to 100 days instead of 90 days after a claim is submitted for claims related to medical support enforcement. For reference, the hyperlink to the November 2019 Information Bulletin is provided here: <https://www.medicaid.gov/federal-policy-guidance/downloads/cib111419.pdf>.

### **State Compliance with Statutory Third Party Liability Changes:**

States should update their Medicaid TPL state plan pages and submit amendments to CMS to reflect the following:

1. The requirement for states to apply cost avoidance procedures to claims for prenatal services, including labor, delivery, and postpartum care services;
2. The requirement for states to make payments without regard to potential TPL for pediatric preventive services, unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for 90 days; and
3. State flexibility to make payments without regard to potential TPL for up to 100 days for claims related to child support enforcement beneficiaries.

States should review and make the required updates to their current state plan pages identified in Section 4.22 of the state plan (including any other applicable pages), bringing their plan into compliance with current law and regulations. CMS expects states to bring state plans into compliance by December 31, 2021.

If you have further questions regarding state compliance with these identified changes or are in need of technical assistance, please contact Cathy Sturgill, Technical Director for the Coordination of Benefits/Third Party Liability (COB/TPL) team for the Division of Health Homes, PACE and COB/TPL within the Disabled Elderly Health Programs Group at [Cathy.Sturgill@cms.hhs.gov](mailto:Cathy.Sturgill@cms.hhs.gov).