DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

CMCS Informational Bulletin

DATE: June 1, 2018

FROM: Timothy B. Hill, Acting Director
Center for Medicaid and CHIP Services (CMCS)

SUBJECT: **Medicaid Provisions in Recently Passed Federal Budget Legislation Bipartisan Budget Act of 2018 – Third Party Liability in Medicaid and CHIP**

On February 9, 2018, President Trump signed the Bipartisan Budget Act of 2018 (Pub. L. 115-123) into law. This new law includes several provisions which modify third party liability (TPL) rules related to special treatment of certain types of care and payment. The purpose of this Informational Bulletin is to provide technical assistance on the key provisions related to third party liability in Medicaid and CHIP.

Background:

Under current law, 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 (MCOs), and 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. The Bipartisan Budget Act of 2018 makes changes to the special treatment of certain types of care, delays the implementation changes to the time period for payment of claims, repeals a provision regarding recoveries from settlements, and applies TPL to CHIP. These changes are described below.

BIPARTISAN BUDGET ACT OF 2018, SECTION 53102, THIRD PARTY LIABILITY IN MEDICAID AND CHIP:

Removing Special Treatment of Certain Types of Care:

There are certain circumstances under which a State Medicaid Agency (SMA) may pay a claim even if a third party is likely liable and then seek to recoup payment from the liable third party. This is referred to as "pay and chase." Pay and chase is required for particular circumstances where there is a risk that if the SMA were to cost avoid claims, providers might choose not to participate in the Medicaid program in order to avoid dealing with the administrative burden associated with Medicaid cost-avoidance claims processing requirements. Previously, current law required that states make payments for prenatal or preventive pediatric care, including

screening and diagnosis, within 30 days without regard to third party liability, and if a third party is found to be liable, seek reimbursement after payment is made.

Section 53102(a)(1) of the Bipartisan Budget Act of 2018 amends section 1902(a)(25)(E) of the Act to require a state to cost avoid for prenatal services as well as requiring the state to collect information on third party liability before making payments. Effective February 9, 2018, SMAs should use standard coordination of benefits cost avoidance when processing prenatal services claims. Thus, if the SMA has determined that a third party is likely liable for a prenatal claim, it must reject, but not deny, the claim returning the claim 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, because 1902(a)(25)(E) of the Act now applies to CHIP, states should follow the same policies in their CHIP programs.

Depending on how a provider bills, the SMA may need to cost avoid claims that it otherwise would have attempted to pay and chase. For example, some obstetricians submit one bill for all prenatal and labor and delivery services. As SMAs are now required to cost avoid prenatal claims, the option to pay and chase for the entire bundled claim is no longer allowed. If an SMA cannot differentiate the costs for prenatal services from labor and delivery on the claim, it will have to cost avoid the entire claim.

Delaying the implementation date of the Bipartisan Budget Act of 2013 provision (which allows for payment up to 90 days after a claim for special populations, instead of 30 days under current law) from October 1, 2017 to October 1, 2019:

Pay and chase is required for particular circumstances in which there is a risk that if the SMA were to cost avoid claims, providers might choose not to participate in the Medicaid program. Section 53102(b)(2) of the Bipartisan Budget Act of 2018 delays the implementation date from October 1, 2017 to October 1, 2019 of the Bipartisan Budget Act of 2013 provision, which allows for payment up to 90 days after a claim is submitted for special populations, instead of 30 days under current law. Effective October 1, 2019, SMAs will have 90 days (instead of 30 days under current law) to pay claims related to medical support enforcement, preventive pediatric services, labor and delivery, and postpartum care.

Repealing section 202(b) of the Bipartisan Budget Act of 2013:

Section 53102(b)(1) of the Bipartisan Budget Act of 2018 also repeals section 202(b) of the Bipartisan Budget Act of 2013. SMAs are now required to recover funds only from the portion of a beneficiary's settlement or judgment intended to cover medical items or services. Settlements and awards often contain more than just payment for the cost of medical care, such as payment for pain and suffering or lost wages.
Additionally, this change repeals the SMAs ability to place liens against property for the collection of excess or improper medical assistance payments made on the behalf of an

individual who should not have received them in the case of a court judgment and the state's rights to third party payment recoupment.

These changes are effective as of September 30, 2017. If between October 1, 2017, and issuance of this Informational Bulletin, a SMA pursued recovery from funds not allocated solely for medical items or services, the SMA must move forward with refunding those funds.

Third Party Liability – Application to CHIP

The application process for CHIP allowed SMAs the option of obtaining information related to third parties even though children must be uninsured to qualify for CHIP. Although children must be uninsured to qualify for CHIP, there may be situations where other types of third parties may be liable for some health expenses, such as auto insurance following an accident.

Section 53102(d) of the Bipartisan Budget Act of 2018 amends section 2107(e)(1) of the Act to apply Medicaid third party liability requirements at 1902(a)(25) of the Act. It is no longer optional to obtain information related to third parties during the CHIP application process. SMAs are now required to pursue third party liability information during CHIP the application process.

This change is effective as of the date of enactment.

Conclusion

As always, CMS is happy to provide technical assistance to states on the legislative provisions outlined in this letter. For reference, the full text of the legislation can be found here: https://www.congress.gov/115/bills/hr1892/BILLS-115hr1892eas2.pdf.

For specific questions related to Third Party Liability, you may contact Cathy Sturgill, Technical Director of Coordination of Benefits/Third Party Liability team, within the Division of Health Homes, PACE, and Coordination of Benefits/Third Party Liability at cathy.sturgill@cms.hhs.gov.

For specific questions related to CHIP, we encourage you to reach out to your CHIP project officer, or you may contact Amy Lutzky, Director of the Division of State Coverage Program, at (410) 786-0721.

Sincerely,

Timothy B. Hill
Acting Director