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State: NA

CMS Rolls Out Proposed Appeals Process for Recovery Actions: Top [2013-12-27]

By [Michael Whiteley](#), Southern Bureau Chief

The Centers for Medicare and Medicaid Services on Thursday announced plans to seek comments on proposed rules to implement the first appeals process for insurers and self-insured employers targeted for recovery actions in workers' compensation, liability and no-fault settlements to meet the requirements of the Strengthening Medicare and Repaying Taxpayers (SMART) Act of 2012.

CMS said in a press release and fact sheet that the proposed rules will be posted in today's edition of the [Federal Register](#), and comments will be accepted through Feb. 25. CMS noted that while current law allows Medicare beneficiaries, providers, physicians and other suppliers to appeal claims decisions and notices of recovery, payers have had no appeals process under the Medicare Secondary Payer Act.

The Medicare Secondary Payer Act of 1980 requires that Medicare be reimbursed for any conditional payments it has made for the medical care of Medicare beneficiaries, when workers' compensation, auto or liability insurers are responsible for that care.

CMS requires insurers and employers that settle workers' compensation, liability and auto insurance cases with future medical care involved to reimburse the Medicare Trust Funds for conditional payments that were the responsibility of the insurers or employers.

The provisions have triggered protracted battles in federal court between CMS and insurers, attorneys and other parties to settlements regarding attempts by the federal agency to recover conditional payments and have resulted in calls for reform by the Medicare Advocacy Recovery Coalition.

The SMART Act, signed into law by President Obama on Jan. 10, 2013, requires CMS to notify parties to settlements of conditional payments within 65 days of CMS receiving a notice of a settlement, mandates CMS to establish an appeals process and bars CMS from Medicare recovery actions more than three years after a settlement or award in a workers' compensation, liability or no-fault case.

The proposed rule would amend 42 Code of Federal Regulations Part 405 and establish a multi-level appeals process for entities it identifies as nongroup health plans.

Notices of recovery would first be reviewed by a qualified independent contractor. The recovery action would then be appealed to an administrative law judge, the U.S. Department of Health and Human Services Departmental Appeals Board and then to the Medicare Appeals Council, which is part of the HHS Medicare Operations Division.

Decisions by the Appeals Council could be appealed to U.S. District Court.

CMS said it will separately address calls by the insurance industry for an appeals process governing adverse rulings on Medicare set-asides, which reserve money for future medical costs.

David Farber, an attorney for the Medicare Advocacy Recovery Coalition, on Thursday applauded the

CMS announcement. He said MARC has been lobbying CMS to release the proposed rule as quickly as possible.

"We wish it had happened six months earlier, but the intent of the SMART Act was to create an appeals process that is similarly aligned with the right of appeal the Medicare beneficiaries have today," Farber said. "CMS has proposed more or less exactly that."

In the past, Farber said, carriers and employees have no choice but to pay the money demanded by CMS and its recovery contractor or wait to be sued in federal court.

He said MARC plans to ask CMS to modify a portion of the proposed rule that would exclude Medicare beneficiaries and health care providers as parties to appeals filed by entities identified by primary payers in workers' compensation, liability and no-fault plans.

MARC will call for appeals to include all parties to a settlement.

"The agency is not allowing beneficiaries to be parties in appeals filed by (nongroup health) plans and has not allowed (those) plans to be parties in appeals by beneficiaries," Farber said.

CMS asked in Thursday's announcement that comments be submitted electronically using the "More Search Options" at the government regulations website [here](#).

Comments also can be mailed to CMS, the Department of Health and Human Services, Attention: CMS-6055-P, P.O. Box 8013, Baltimore, MD 21244-8013.

The preliminary version of the proposed rule being considered by CMS is [here](#).

H.R. 1845, the SMART Act, is [here](#).