



# Untangling the Web of Medicare Compliance for Risk & Casualty Program Managers in the Healthcare Industry

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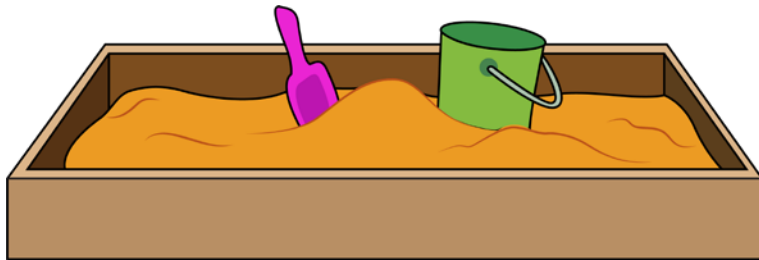
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“Meeting Your Medicare Compliance Needs Nationally!”

# Which Sandbox are You Playing In

Tort/Liability claims



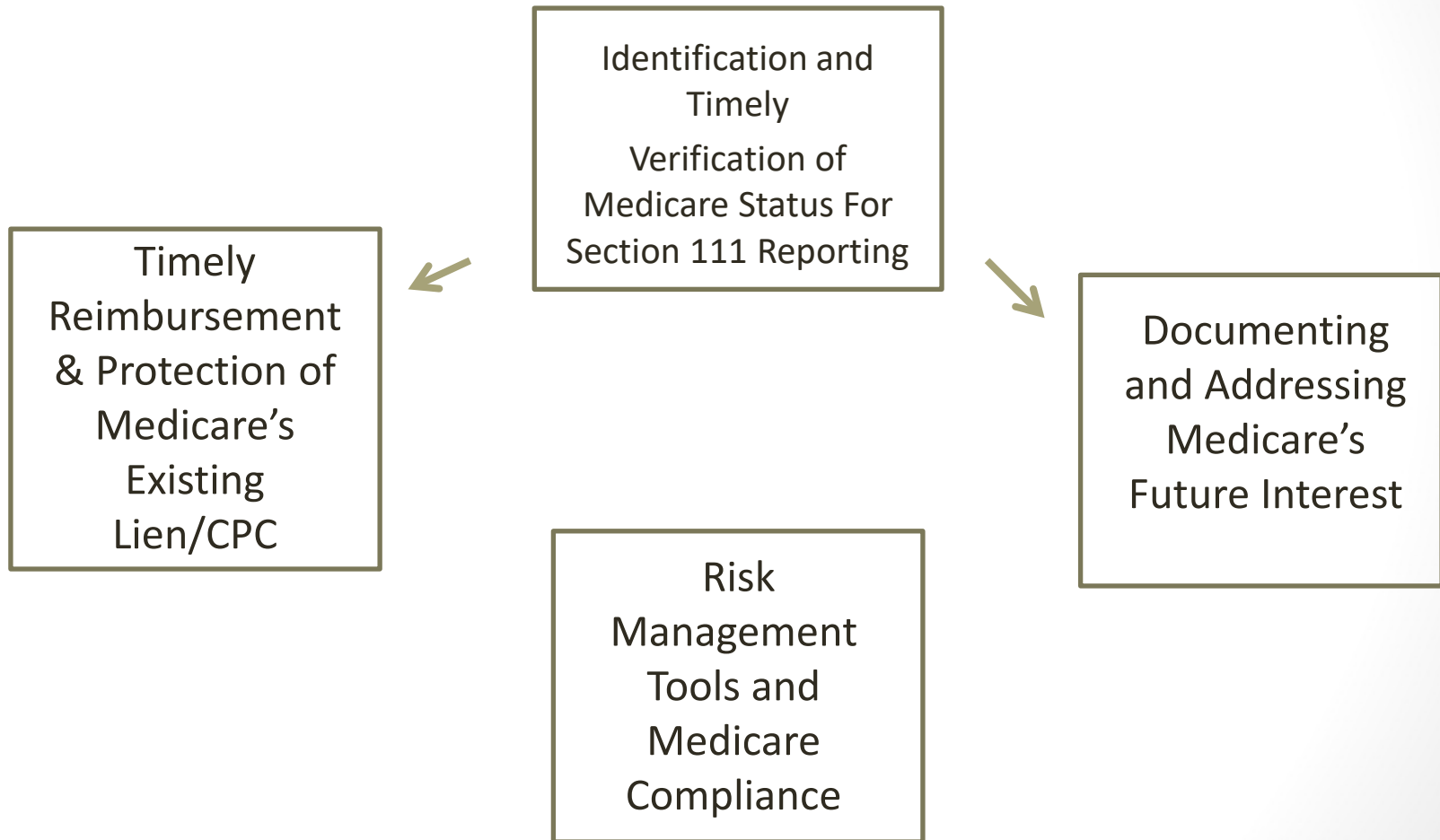
Medicare  
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# Medicare Secondary Payer Act And Impact Upon Casualty Program



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# Medicare Secondary Payer Act And Impact Upon Casualty Program

Identification and Timely  
Verification of Medicare Status  
of Claimant For Section 111  
Reporting

# Section 111 Reporting and Impact Upon Claim Programs!


- Section 111 Reporting Obligations for Liability matters:
  - Three Questions to be Asked:
    - Was the claimant ever or are they a current Medicare Beneficiary?
    - Were medicals claimed or released with the settlement?
    - Was the payment/consideration (TPOC) above the Section 111 Reporting Threshold? (\$750.01)
  - If yes to all three questions, a Section 111 Reporting Event has been triggered on behalf of each claimant identified on release or judgment
- Information Included:
  - Date of TPOC, Information about Plaintiff/Plaintiff's Counsel/Defendant client, DOA, amount of settlement ICD-10 Codes
- Cause and Effect
  - CMS and Medicare Advantage Plan will research again every file!

## Section 111 Reporting and Impact Upon Claim Programs!

- 42 USCS § 1395y (b)(8) created mandatory reporting for liability insurance entities
- Section 111 fines proposed regulations February 2020
  - Up to \$1,000 a day per claim for non-compliance
    - Failure to identify and report
    - Exceeds error tolerance threshold
  - SOL of 5 years from date non-compliance identified
  - Steps to identify & document claimant as a past or current Medicare beneficiary (Big 5 for Query)
    - Communicate need for information at least twice in writing and once by phone or other means (email)
    - Certifies internally & documents that either RRE has not received a response or claimant refuses to cooperate
    - The date the release is signed is the determinative date

# Medicare Secondary Payer Act And Impact Upon Casualty Program

Identification and  
Timely Verification of  
Medicare Status for  
Section 111  
Reporting



Timely  
Reimbursement &  
Protection of  
Medicare's Existing  
Lien/CPC



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## Conditional Payment Reimbursement and Impact Upon Claim Programs!

- Release, Judgment and/or Payment is an admission of liability for all medical conditions/treatment claimed and/or released.
- Release, judgment and/or payment creates the statutory lien.
- Medicare/Medicare Advantage Plan must be afforded the opportunity to research, assert and/or collection Conditional Payment Claim where have Section 111 Reporting Obligation (Remember the sandbox you are playing in!).
- Do not have to know Medicare's final lien prior to settle.
- Medicare may collect from the Plaintiff, Plaintiff's Attorney, Physician (letter of protection) or Primary Payer/RRE/Defendant.
- A release/indemnification language is not a defense or shield to subsequent cause of action by CMS.
- Releasees have an affirmative duty to ensure Medicare/Medicare Advantage plans are timely and properly reimbursed. *Humana Ins. Co. v. Bi-Lo, LLC, 2019 U.S. Dist. LEXIS 163063*

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# Conditional Payment Reimbursement and Impact Upon Claim Programs!

- **Must only negotiate to ensure verification post execution of release of protection of Medicare or Medicare Advantage Plan interest.**
- Release creates obligation and is mechanism to ensure compliance through strategic terms and language
- Strategic Options to be employed
  - **Waiver:** Medicare/Medicare Advantage Plan's liens are waived if settlement is for less than \$750.00
  - **25% Reimbursement Option:** Settlements for \$750.01 and/up to \$5,000 CMS will accept 25% of release consideration
  - **Assume Responsibility for liens:** Federal Regulations cap Medicare/MAP recovery at the amount of settlement consideration reflected in release. Primary strategic tool with all pro se claimants
  - **Assign Responding for liens:** Include carrot for compliance with either: hold back provision, Medicare as Payee, or hold in trust provision for Plaintiff's counsel.
- **Must Educate Plaintiff's Counsel (Defense Counsel) Relating to Compliance**

# Medicare Secondary Payer Act And Impact Upon Casualty Program

Identification and  
Timely  
Verification of Medicare  
Status for Section 111  
Reporting



Addressing  
Medicare's Future  
Interest

# Medicare's Future Interest and Impact Upon Claim Handling

- Published July 2016 Notice
  - The Centers for Medicare and Medicaid Services (CMS) is considering expanding its voluntary Medicare Set-Aside Arrangements (MSA) amount review process to include the review of proposed liability insurance (including self-insurance) and no-fault insurance MSA amounts. CMS plans to work closely with the stakeholder community to identify how best to implement this potential expansion. CMS will provide future announcements of the proposal and expects to schedule town hall meetings later this year. Please continue to monitor [CMS.gov](https://www.cms.gov) for additional updates.
- Notice of Proposed Rule Making Published Fall 2018
  - The proposed rule would ensure that beneficiaries are making the best health care choices possible providing them and their representatives with the opportunity to select an option for meeting future medical obligations that fits their individual circumstances, while also protecting the Medicare Trust. Currently, Medicare does not provide beneficiaries with guidance to help them make choices regarding their future medical care expenses when they receive a settlement to satisfy their MSP Obligations.

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## Addressing Medicare's Future Interest and Impact Upon Claim Programs!

- 42 USC 1895y(b)(2) allows Medicare to recover a conditional payment claim which arises pre or post execution of a release, judgment or payment.
- Liability for claimed conditions is established per CMS with execution of release and payment of consideration.
- Standard is whether we reasonably anticipate claimant will need future accident related claimed medical treatment?
- If yes, allocate reasonable amount from total consideration to reflect protection of Medicare's future interest.
  - Intent is not to hold Medicare completely harmless
  - Intent is to allocate from various claimed damages a reasonable amount for future medicals.

# Medical Bill Write-Offs and Reductions as a Risk Management Tool

- If a Healthcare Provider writes off a bill as consideration for a release with a past or current Medicare beneficiary for an amount greater than \$750.00:
  - Then a Section 111 Reporting obligation exist and Conditional Payment Risk.
- If Healthcare Provider writes off a medical bill as a risk management tool but a release is not secured:
  - No section 111 reporting obligation
  - No conditional payment reimbursement
  - Must submit bill to CMS showing amount of reduction/write-off
- If Healthcare Provider provides property of value as a risk management tool which value is greater than \$750.00 and evidence exist suggesting the claimant received medical treatment:
  - A Section 111 reporting obligation exist

# General Approach

- Understand if you are a RRE/Primary Payer for Section 111 Reporting Purposes
- *Understand that the Release creates obligation for and proof of compliance:*
  - *Section 111 Reporting Obligation.*
    - *Percentage of cases where consideration paid greater than \$750.00?*
  - *Conditional Payment Claim Reimbursement.*
    - *Administrative Appeal Process & Analysis for inclusion*
  - *Protecting Medicare's Future interest.*
    - *Whether, when and how..*
- *Do you have a process in place and appropriate release terms/language*

# QUESTIONS?

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