Medicaid Third Party Liability and Older Americans Act Services

Medicaid programs generally serve as the "payer of last resort" when reimbursing providers for covered services.[1] In Medicaid, the process of identifying other sources of coverage and ensuring payment from those entities is referred to as Coordination of Benefits (COB) and Third Party Liability (TPL). For practical application, these policies mean that Medicaid will not pay for an individual's health claims until all other available sources of payments have been pursued and exhausted. Other sources of payment can include public or private programs and funding, such as Medicare, private insurance, or funds awarded for cost of care in injury settlements.

Medicaid TPL policy and other Federal statutes exempt some government programs from this requirement, and Medicaid will therefore reimburse for covered services that could potentially be paid by an exempted program. According to Federal guidance from both the Administration for Community Living (ACL) and the Centers for Medicare & Medicaid Services (CMS), services funded by the Older Americans Act are exempt from Medicaid TPL requirements.[2] Of particular note is the CMS factsheet, which states that Medicaid is the primary payer to OAA-funded services based upon sections 321(d) and 374 of the OAA.[3]

This guidance makes it clear that Older Americans Act services, such as home delivered meals, should not be provided for an individual who may be eligible for both programs. In some cases, Medicaid managed care plans may look for alternate sources of payment for services they are otherwise responsible for covering (a process called "cost avoidance.") However, as the Federal guidance from ACL and CMS makes clear, cost avoidance should not involve attempting to have OAA funds used for the service instead of the Medicaid managed care plans reimbursing the provider for the Medicaid covered service.

Additionally, States can create eligibility policies and procedures to allocate both Medicaid and OAA funded services in a manner that maximizes the impact for individuals who need services. For example, a state could include home delivered meals in a Medicaid long-term services and supports program while simultaneously crafting differentiated eligibility criteria to provide OAA meals to individuals who are not Medicaid eligible. This would allow individuals on Medicaid to receive all needed services, while also providing supports to individuals who may require LTSS but who are not yet eligible for Medicaid. Allocating resources in this manner could also reduce future Medicaid expenditures by providing limited supports that prevent health deterioration and delay entry into more costly Medicaid services.

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[1] This is a statutory requirement established by 1902(a)(25) of the Social Security Act

[2] The Administration for Community Living states that OAA may not be required to fund services covered by Medicaid: http://www.aoa.gov/AOA_programs/OAA/resources/faqs.aspx#Resort

[3] *"Coordination of Medicaid coverage & payments with other insurers. Payer of last resort."* Published December 2014. See Appendix.

APPENDIX

COORDINATION OF MEDICAID COVERAGE & PAYMENTS WITH OTHER INSURERS

PAYER OF LAST RESORT

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Section 1902(a)(25) of the Social Security Act (SSA) requires States to make all reasonable efforts to seek reimbursement from third parties who are legally liable to pay for care and services provided to Medicaid recipients. "Third party" is defined in the regulations as "any individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan." Medicaid is last payer for services covered under Medicaid, except in those limited circumstances where there is a Federal statute making Medicaid primary to a specific program. Below is a breakout of Federal and State programs that are primary and secondary to Medicaid.

Federal or State Mandated/State-Run Programs Primary to Medicaid	Federal or State Mandated/State-Run Programs Secondary to Medicaid by Federal Statute
• Medicare (Title XVIII of SSA) • TRICARE/Champus (42 USC 1079(J)) • Vaccine Injury Compensation (P.L. 101-239) • 504 Services (DOE) • Public Health Programs administered by HRSA, SAMHSA or CDC (e.g., Hansen's program, Black lung program) • Any State or locally mandated program for mental health or other medical arena, including programs to provide primary and preventive care in schools	• Crime Victims Compensation (42 USC 10602 – DOJ) • Part B & C of IDEA (DOE)(1903(c) of SSA) • Ryan White (P.L. 101-381) • Indian Health (1905(b) of SSA) • WIC (42 USC Section 1786) • Older Americans Act programs (OAA Sections 321(d) and 374) • Veterans Benefits—Emergency treatment furnished to certain veterans in a non-VA facility (38 USC, Section 1725) • Veterans Benefits—State nursing home per diem payments (38 USC, Section 1741) • State health agencies; State vocational rehabilitation agencies; and grantees under title V (e.g., Children with Special Health Care Needs), if provided for by arrangement or agreement with the State Medicaid agency (1902(a)(11) of SSA)

CMS Fact Sheet Last Updated: December 2014