

CHAPTER 259. THIRD-PARTY LIABILITY

- Sec.
259.1. Statement of claim; managed care organizations—statement of policy.
259.2. Claims against moneys for which third parties are liable as a result of a tort claim allocation of tort proceeds in actions filed before September 2, 2008—statement of policy.
259.3. Claims against moneys for which third-parties are liable as a result of a tort claim allocation of tort proceeds in actions filed on or after September 2, 2008—statement of policy.
259.4. Settlements without litigation—statement of policy.
259.5. Cooperation in obtaining payment from third parties—statement of policy.
259.6. Civil money penalties—statement of policy.

Source

The provisions of this Chapter 259 adopted July 10, 1998, effective July 11, 1998, and apply retroactively to February 1, 1997, 28 Pa.B. 3301, unless otherwise noted.

§ 259.1. Statement of claim; managed care organizations—statement of policy.

(a) With respect to claims against third parties for the costs of Medical Assistance (MA) services delivered through a Managed Care Organization (MCO) contract, the Department will recover the actual payment to the hospital or other medical provider for the service. If no specific payment is earmarked by the MCO for the service, such as in the example of a capitated payment to physicians, the Department will recover its fee schedule amount for the service.

(b) If the MCO fails to provide the Department with information necessary to compute the statement of claim within contractual deadlines, the Department will use the amount of the capitation payments made to the MCO since the date of the injury as its claim against the third party until sufficient information is provided to compute a statement of claim in accordance with subsection (a). When the Department is forced to use the capitation payment to compute its statement of claim, the MCO will be liable to the Department for the amount of the Department's diminished recovery in accordance with the terms of the MCO's contract with the Department.

§ 259.2. Claims against moneys for which third parties are liable as a result of a tort claim allocation of tort proceeds in actions filed before September 2, 2008—statement of policy.

(a) With respect to claims asserted by the MA Program against moneys owed by third parties as a result of tort claims asserted by a beneficiary of MA benefits, the Department will only recover from that portion of a tort recovery which represents payment for medical care by the third party. The term "beneficiary" includes both present and former recipients of MA benefits, and includes individuals receiving benefits through an MA managed care organization.

(b) In determining the portion of a tort recovery that represents payment for medical care by a third party, the Department will apply the following interpretations:

(1) Unless the Department intervenes in a lawsuit or sues separately, beneficiaries, including beneficiaries who are minors, are vested with the right to recover injury related medical expenses paid by the MA Program as part of their cause of action for other damages, and absent an express court order to the contrary are deemed to recover medical expenses as part of any tort recovery.

(2) In the absence of a court order allocating tort proceeds among categories of damages, 1/2 of the net proceeds are allocated by law to be available to repay injury-related MA expenses. The amount of net proceeds is computed by deducting from the gross proceeds the attorney's fees, litigation costs and medical expenses relating to the injury that were paid for by the beneficiary prior to the settlement of the injured beneficiary's action or claim.

(3) If the beneficiary or other party seeks to obtain a court order limiting the portion of the tort recovery from which MA reimbursement may be paid to an amount less than 1/2 of net proceeds, or excluding amounts paid by the MA Program from the recovery, the Department shall be given fair notice and an opportunity to protect its interest.

(4) Failure to provide the Department with fair notice and an opportunity to protect its interest, prior to obtaining a court order limiting the portion of a tort recovery from which MA reimbursement may be paid, constitutes a violation of section 1408(a)(1) of the Public Welfare Code (62 P. S. § 1408(a)(1)).

(5) The Department is not bound by a private agreement between the parties to a tort claim regarding allocation of the proceeds.

(6) The Department's claims against third parties for reimbursement of MA cannot be released by a beneficiary without the Department's express consent in writing.

(c) The following procedures provide the Department with fair notice and an opportunity to protect its interest prior to entry of an order subject to subsection (b)(3):

(1) In a case when the beneficiary seeks to exclude injury-related medical expenses paid by the MA Program from the recovery, the beneficiary shall comply with the notice of suit requirements in section 1409(b)(5) of the Public Welfare Code (62 P. S. § 1409(b)(5)) and include a statement that the beneficiary will seek to exclude moneys paid by the MA Program from any recovery.

(2) In a case when the beneficiary seeks an allocation of tort proceeds by the court or a trier of fact, the beneficiary shall provide the Department with reasonable advance notice and opportunity to intervene in the case prior to the determination.

(3) In a case when the beneficiary seeks a court order limiting the portion of the tort settlement from which MA reimbursement may be paid to an amount

less than 1/2 of the net proceeds of any settlement, the beneficiary shall provide the Department with reasonable advance notice of settlement before it becomes binding.

(4) In a case when a motion is to eliminate medical expenses paid by MA from the case, the moving party shall provide the Department with reasonable advance notice and an opportunity to intervene in the case prior to adjudication of the motion.

(5) Thirty days advance notice is considered reasonable advance notice under this subsection.

(6) Notices must be in writing and sent by certified or registered mail to the Division of Third-Party Liability, Department of Human Services, P. O. Box 8486, Harrisburg, PA 17105 and include the following information:

- (i) The name of the beneficiary.
- (ii) The beneficiary's MA identification number, if known.
- (iii) The beneficiary's date of birth.
- (iv) The name of the beneficiary's attorney, if applicable.
- (v) The insurance carriers, if applicable.
- (vi) The date and specific injuries giving rise to the claim.
- (vii) The court and docket number in which the claim is pending, if applicable.

(d) If a court does not adjudicate the amount of the Department's claim against a settlement, the Bureau of Hearings and Appeals has jurisdiction to hear and determine an appeal by a beneficiary contesting the amount of the Department's claim.

Source

The provisions of this § 259.2 adopted September 7, 2007, effective September 8, 2007, 37 Pa.B. 4881; amended October 31, 2008, effective November 1, 2008, 38 Pa.B. 5970. Immediately preceding text appears at serial pages (329301) to (329303).

§ 259.3. Claims against moneys for which third-parties are liable as a result of a tort claim allocation of tort proceeds in actions filed on or after September 2, 2008—statement of policy.

(a) With respect to claims asserted by the MA Program against moneys owed by third parties as a result of tort claims asserted by a beneficiary of MA benefits, the Department will only recover from that portion of a tort recovery which represents payment for medical care by the third party. The beneficiary has the burden of informing the Department that its claim must be limited under this subsection and showing not all medical expenses paid by MA were recovered. For purposes of this section, the term "beneficiary" includes both present and former adult and minor recipients of MA benefits, and includes individuals receiving benefits through an MA managed care organization.

(b) If a beneficiary elects not to recover expenses for which medical assistance is provided under section 1409(b)(5) of the Public Welfare Code (62 P. S. § 1409(b)(5)) then:

(1) The Department will pursue its claim directly against the liable third-party or insurer if it is cost-effective to do so.

(2) The Department will not reduce its claim on account of attorney fees or costs incurred by the beneficiary regardless of any indirect benefit that the Department receives from the beneficiary's prosecution of his claim.

(3) The beneficiary is prohibited from attempting to recover past or future medical expenses that will be paid by MA.

(4) Notice of settlement under section 1409(b)(5)(iv) of the Public Welfare Code shall be provided to the Department.

(5) The election not to recover expenses paid by MA may be revoked by the beneficiary only with the consent of the Department in writing.

(6) The beneficiary shall disclose to the liable third party or insurer that the beneficiary has elected not to recover expenses paid by MA and that the third-party or insurer will remain liable to the Department on the claim.

(7) The beneficiary shall cooperate with the Department's efforts to obtain payment of medical care from any liable third-party or insurer as a condition of eligibility for MA in accordance with § 259.5 (relating to cooperation in obtaining payment from third-parties—statement of policy)

(c) A beneficiary may not settle or release the Department's claims against third parties or insurers without the Department's consent.

(d) The Department may impose a \$5,000 civil money penalty for a violation of the notice requirements of section 1409(b)(5) of the Public Welfare Code or the distribution requirements of section 1409(b)(9) of the Public Welfare Code. A separate penalty may be imposed for each violation of the law. In determining whether to assess a civil money penalty against a third party or insurer for violating the statutory requirements, the Department will deem a third party or insurer to have information indicating that a beneficiary received MA if the beneficiary's MA status is shown in records received by the third party or insurer.

(e) The Department will not impose or pursue liability under section 1409(b)(9) of the Public Welfare Code against a third party or insurer for the distribution of settlement proceeds on a claim by a beneficiary if an insurer or third-party has complied with one or more of the following requirements:

(1) The insurer resolves the Department's claim with the Department and makes direct payment to the Department.

(2) The insurer or third party requires the beneficiary to satisfy the Department's claim and makes the Department a payee on the settlement draft so that the Department's endorsement is required to negotiate the draft.

(3) The insurer obtains a statement from the Division of Third-Party Liability that the Department has no claim against the settlement.

(f) Notices to the Department under sections 1409 and 1409.1 of the Public Welfare Code (62 P. S. §§ 1409 and 1409.1) must be in writing and sent by certified or registered mail to the Division of Third-Party Liability, Department of Human Services, P. O. Box 8486, Harrisburg, PA 17105 and include the following information:

- (1) The name of the beneficiary.
- (2) The beneficiary's MA identification number, if known.
- (3) The beneficiary's date of birth.
- (4) The name of the beneficiary's attorney, if applicable.
- (5) The insurance carriers and claim numbers, if applicable.
- (6) The date and specific injuries giving rise to the claim.
- (7) The court and docket number in which the claim is pending.
- (8) The filing date of the lawsuit or claim.
- (9) The close of discovery date.

(g) A notice of election to exclude medical expenses paid by MA from a claim that is made within 30 days of filing the complaint must contain a copy of the complaint. A notice of election to exclude medical expenses paid by MA from a claim that is made more than 30 days after the filing of the complaint must contain a copy of the complaint and the docket entries in the case.

(h) A notice of election to exclude medical expenses paid by MA is not reasonable if it is given after the close of discovery in a case, or in the event of a settlement prior to the close of discovery, it is given less than 30 days prior to the date the settlement agreement is fully executed.

(i) If a court does not adjudicate the amount of the Department's claim against a settlement, the Bureau of Hearings and Appeals has jurisdiction to hear and determine an appeal by a beneficiary contesting the amount of the Department's claim.

Source

The provisions of this § 259.3 adopted October 31, 2008, effective November 1, 2008, 38 Pa. Code 5970.

§ 259.4. Settlements without litigation—statement of policy.

(a) With respect to claims asserted by the MA Program against moneys owed by third parties as a result of tort claims asserted by a beneficiary of MA benefits, the Department will only recover from that portion of a tort settlement which represents payment for medical care by the third party. The beneficiary has the burden of informing the Department that its claim must be limited under this subsection and showing not all medical expenses paid by MA were recovered. For purposes of this section, the term "beneficiary" includes both present and former adult and minor recipients of MA benefits, and includes individuals receiving benefits through an MA managed care organization.

(b) If a beneficiary settles a tort claim without litigation, the settlement includes medical expenses paid by MA unless one of the following applies:

(1) The case involves a minor or incapacitated individual and a court enters an order expressly adjudicating the Department's claim after the Department has been given notice and an opportunity to be heard.

(2) The beneficiary is legally incapable of recovering the medical expenses paid by MA.

(3) The beneficiary notifies both the Department and the third party or insurer that the beneficiary's claim does not include medical expenses paid by MA prior to settling the claim.

(c) A beneficiary may not settle or release the Department's claims against third parties or insurers without the Department's written consent.

(d) The failure to provide reasonable notice to the Department that a claim does not include recovery of medical expenses paid by MA constitutes a violation of section 1408(a)(1) of the Public Welfare Code (62 P. S. § 1408(a)(1)). Notice is not reasonable if it is given less than 30 days prior to the date a settlement agreement is fully executed.

(e) The Bureau of Hearings and Appeals has jurisdiction to hear and determine an appeal by a beneficiary contesting the amount of the Department's claim against a settlement.

Source

The provisions of this § 259.4 adopted October 31, 2008, effective November 1, 2008, 38 Pa. Code 5970.

§ 259.5. Cooperation in obtaining payment from third parties—statement of policy.

(a) A beneficiary has a duty to cooperate with the Department in obtaining payment from third parties and insurers as a condition of eligibility for MA.

(b) If a beneficiary does not cooperate with the Department's efforts to obtain payment of medical care from any third party or insurer, then the Department will determine the beneficiary to be ineligible for MA and pursue an overpayment of MA received after the date of noncooperation. The Department is not limited to recovering from the medical portion of a tort recovery when an overpayment is established.

(c) Cooperation with the Department's efforts to obtain payment of medical care from any third party or insurer includes the following:

(1) Disclosing to the Department that a claim was filed against an insurer or third party.

(2) Identifying and providing information to assist the Department in pursuing a third party who may be liable to pay for medical care and services.

(3) Consenting to the Department's intervention into the beneficiary's pending lawsuit.

- (4) Consenting to a reasonable extension of time requested by Department counsel in the case.
- (5) Providing Department counsel copies of discovery documents and legal papers filed in the lawsuit upon request.
- (6) Disclosing to the liable third party or insurer that the beneficiary has elected not to pursue recovery of expenses paid by MA and the third party or insurer will remain liable to the Department on the claim.
- (7) Not agreeing to indemnify or release the liable third party or insurer from the Department's claims.
- (8) Providing testimony and evidence in support of the Department's claim.
- (9) Providing notices required under section 1409(b)(5) of the Public Welfare Code (62 P. S. § 1409(b)(5) in compliance with this section.
- (10) Including medical expenses paid by MA in a claim or lawsuit if requested to do so by the Department.
- (11) Taking any other action requested by the Department that is necessary to pursue a claim against a third party.

Source

The provisions of this § 259.5 adopted October 31, 2008, effective November 1, 2008, 38 Pa. Code 5970.

§ 259.6. Civil money penalties—statement of policy.

- (a) The Department may impose a civil money penalty of up to \$5,000 per violation upon a person who willfully fails to comply with the obligations imposed under section 1409 of the Public Welfare Code (62 P. S. § 1409).
- (b) The Department may impose a civil money penalty of up to \$1,000 per violation upon a person who willfully fails to disclose a material fact regarding third party liability for a beneficiary's injuries.
- (c) Persons who are required to disclose information regarding third-party liability to the Department include the beneficiary, any representative of the beneficiary, and any liable third-party or insurer in possession of that information.
- (d) "Willfully" means that the person acted intentionally in the sense that the person intended to do the act and was aware of what the person was doing. Proof of evil motive or intent or knowledge that the person's conduct violated the law is not required.
- (e) The Bureau of Hearings and Appeals has jurisdiction to hear appeals from the assessment of civil money penalties by the Department.

Source

The provisions of this § 259.6 adopted October 31, 2008, effective November 1, 2008, 38 Pa. Code 5970.

[Next page is 273-1.]

259-8

(339552) No. 410 Jan. 09

Copyright © 2009 Commonwealth of Pennsylvania