

TO: All Providers

FROM: CareFirst of Maryland, Inc.

DATE: August 19, 2004

SUBJECT: Medicare “Must Bill” Policy for Reimbursement of Dual-Eligible Bad Debts

In order to fulfill the requirement that a provider make a "reasonable" collection effort with respect to the deductibles and co-insurance amounts owed by dual-eligible patients, our bad debt policy requires the provider to bill the patient or entity legally responsible for the patient's bill before the provider can be reimbursed for uncollectible amounts. This “must bill” policy was recently upheld by the federal Ninth Circuit Court of Appeals in *Community Hospital of the Monterey Peninsula v Thompson*, 323 F.3d 782 (9th Cir. 2003). The “must bill” policy states that if a patient is determined by the provider to be indigent or medically indigent, the provider does not need to attempt to collect from the patient. However, the provider must make certain that "no source other than the patient would be legally responsible for the patient's medical bill; e.g., title XIX, local welfare agency...."¹ prior to claiming the bad debt from Medicare.

With respect to “dual-eligibles,” Section 1905(p)(3) of the Social Security Act (“Act”) imposes liability for cost-sharing amounts for Qualified Medicare Beneficiaries on the States, though Section 1902(n)(2) allows the states to limit that amount to the Medicaid rate and essentially pay nothing toward dual eligibles’ cost-sharing if the Medicaid rate is lower than what Medicare would pay for the service. However, in those instances where the state owes none or only a portion of the dual-eligible patient’s deductible or co-pay, the unpaid liability for the bad debt is not reimbursable to the provider by Medicare until the provider bills the State, and the State refuses payment (with a State Remittance Advice). Even if the State Plan Amendment limits the liability to the Medicaid rate, by billing the State, a provider can verify the current dual-eligible status of a beneficiary and can determine whether or not the State is liable for any portion thereof.

In November of 1995, language was added in PRM-II Section 1102.3L (the cost report questionnaire) that allowed providers to show other documentation in lieu of billing the states. Unfortunately, that language conflicted with the billing requirements in Chapter 3 of the PRM-I, and the Ninth Circuit panel found Section 1102.3L to be inconsistent with the Secretary's must-bill policy (323 F.3d at 799). The panel also noted that, effective in August of 1987, Congress had imposed a moratorium on changes in bad-debt-reimbursement policies, and therefore the Secretary lacked authority in November of 1995 to effect a change in policy (Id. At 798, note 9).

As a result of the Ninth Circuit decision, we changed the language in PRM-II Section 1102.3L to revert back to pre-1995 language, which requires providers to bill the individual states for dual-eligibles’ co-pays and deductibles before claiming Medicare bad debt (See Change Request 2796, issued September 12, 2003).

This bulletin is to serve as a directive to hold harmless providers that can demonstrate that they followed the instructions previously laid out at 1102.3L, for open cost reporting

¹ See, e.g., CMS Provider Reimbursement Manual, sections 312, 322.

periods beginning prior to January 1, 2004. Intermediaries who followed the now-obsolete Section 1102.3L instructions for cost reporting periods prior to January 1, 2004 may reimburse providers they service for dual-eligible bad debts with respect to **unsettled** cost reports that were deemed allowable using other documentation in lieu of billing the state.

Intermediaries that required the provider to file a State Remittance Advice for cost reporting periods prior to January 1, 2004, may NOT reopen providers' cost reports to accept alternative documentation for such cost reporting periods. **This "hold harmless" policy affects only those providers with cost reports that were open as of the date of issuance of this memorandum,** relating to cost reporting periods before January 1, 2004, and who relied on the previous language of section 1102.3L in providing documentation.

(Source: JSM 370 dated August 10, 2004)

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