



April 4, 2014

Ms. Marilyn Tavenner, RN, MHA  
Administrator  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

**RE: Third Party Liability for Home Health Services**

Dear Ms. Tavenner:

I write on behalf of LeadingAge New York's home health agency members to respectfully urge the Centers for Medicare and Medicaid Services (CMS) to resume use of a statistical sampling approach or other streamlined method for purposes of determining Medicare Third Party Liability (TPL) for home health services claims for dually eligible beneficiaries that were originally paid by New York's Medicaid program.

LeadingAge New York is the only statewide organization representing the entire continuum of not-for-profit, mission driven and public continuing care services, including home health agencies, other community-based services providers, adult day health care, assisted living programs and Medicaid managed long term care (MLTC) plans. Our certified home health agency (CHHA) and long term home health care program (LTHHCP) members are directly and profoundly affected by the TPL process. The LTHHCP is a Medicaid Section 1915(c) waiver program for homebound nursing home eligible recipients that is also certified as a Medicare provider.

As you are aware, CMS conducted a pilot program with the State of New York (Project Number 95-W-00084/02) that utilized a sampling approach to determine Medicare's share of the cost of home health agency claims for dual eligibles that were originally submitted to and paid by Medicaid. Similar pilots were also conducted in Connecticut and Massachusetts. The sampling technique was used in lieu of individually gathering Medicare claims from home health agencies for every dual eligible Medicaid claim the state had possibly paid in error. This process eliminated the need for CHHAs and LTHHCPs to assemble, copy, and submit huge numbers of medical records, as well as the need for the regional home health intermediary to review every case. The pilot consisted of two components: (1) an educational initiative to improve the ability of all parties to make appropriate coverage recommendations for crossover claims; and (2) a statistically valid sampling methodology to settle claims paid by Medicaid that the state believed could also be covered by Medicare.

The TPL pilot program offered a fair and efficient process for New York State, the federal government and home health agencies to settle claims for dually eligible beneficiaries. It relied upon statistical sampling, a widely accepted technique for conducting audits of governmental and private sector

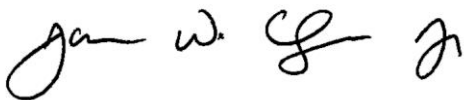
programs in a way that minimizes the administrative burden on auditors, organizations being audited and payers. Unfortunately, the program was inexplicably terminated at the end of FFY 2010. Since that time, home health agencies in New York have been forced to needlessly waste valuable manpower and money in filing thousands of perfunctory Medicare appeals, most of which they know will be denied. This has also needlessly added to the workload of audit agencies and the intermediaries.

The added TPL administrative burden on New York's home health agencies is now coming to a head. Our members have said that the volume of home health claims that they are currently being asked to rebill to Medicare for dates of services between April 1, 2013 and Sept. 30, 2013 is many times greater than in previous years. Unfortunately, this is also coming at a time of major business disruption in New York's home health sector. CMS-approved amendments to the state's Medicaid Section 1115 Partnership Plan waiver require dual eligible beneficiaries who need more than 120 days of home health services to enroll in MLTC plans. This mandate is leading to several home health agency closures and consolidations, and resulting changes to the methods of Medicaid reimbursement are placing even greater pressure on agencies' administrative costs. Without the manpower to comply with TPL rebilling requirements, agencies have been forced to hire contractual staff, reconfigure their operations and even take clinical staff from the field. Ironically, this could be adversely affecting access to home health services.

For all of these reasons, we respectfully request that CMS suspend the current, administratively burdensome process for determining Medicare's third party liability for home health claims already reimbursed by Medicaid. In its place, the agency should work with New York State to reinstitute a statistical sampling approach to fulfilling this responsibility. Such an approach could also focus on improving billing activities among home health agencies that may have demonstrated difficulty in correctly billing for such services.

LeadingAge NY is available to discuss how best to meet the expectation of the TPL process without it being an undue administrative burden to our members and other stakeholders. We look forward to your timely response. If you have any questions in the meantime, please contact us at (518) 867-8383.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Clyne, Jr.", written in a cursive style.

James W. Clyne, Jr.  
President/CEO

cc: Hon. Kirsten Gillibrand  
Hon. Charles E. Schumer  
James Cox, NYS Medicaid Inspector General  
William L. Minnix, Jr., LeadingAge