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- **CE credits are only available for those who qualify during the LIVE version of this webinar held from 2:00-3:00 p.m. ET on 6/19/2019.**

On24 System Requirements:

- Windows 7+ (Microsoft Edge, Latest Internet Explorer, Firefox, or Chrome)
- Apple Mac OS 10.10+ (*Latest Firefox, Safari, or Chrome)
- Android 6.x (Chrome Browser Only)
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* Official support for the "latest" version of a newly released browser, among those noted above, will be added within 8 weeks of public release. Until then, the previous version will continue to be supported instead.

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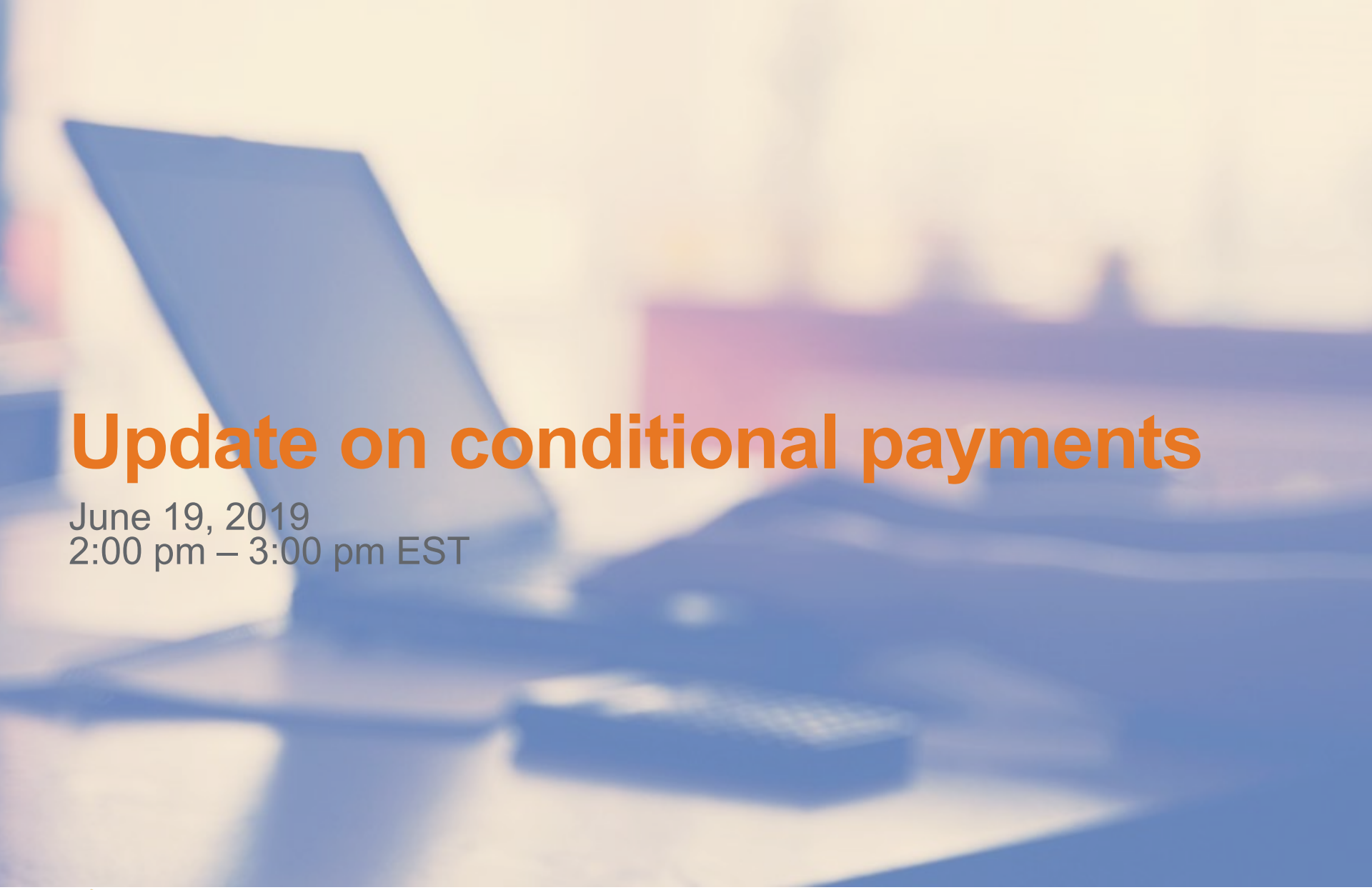

Update on conditional payments

June 19, 2019
2:00 pm – 3:00 pm EST

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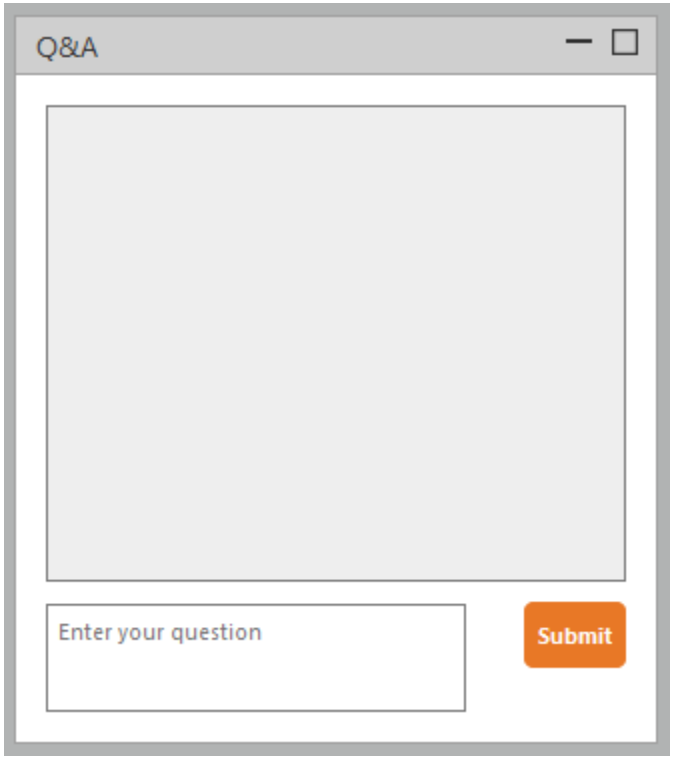
Questions will be answered at the end of the presentation as time allows.



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Today's presenters

Lavonya Chapman
Associate General Counsel, Settlement Solutions

Ruth Fantham
Manager, Conditional Payments, Settlement Solutions

Rafael Gonzalez
President, Settlement Solutions

Discussion topics

1. Conditional payment issues affecting the Non-group Health Plan industry
2. Conditional payment trends, issues, and concerns
3. General CRC procedures to process Conditional Payments
4. ORM acceptance CRC's ability to collect Conditional Payments
5. Navigating claims at the U.S. Department of Treasury

Conditional payment issues affecting the Non-group Health Plan industry

- 2019 Medicare Trustees Report
- Medicare Secondary Payer
- Conditional Payments Resolution Process

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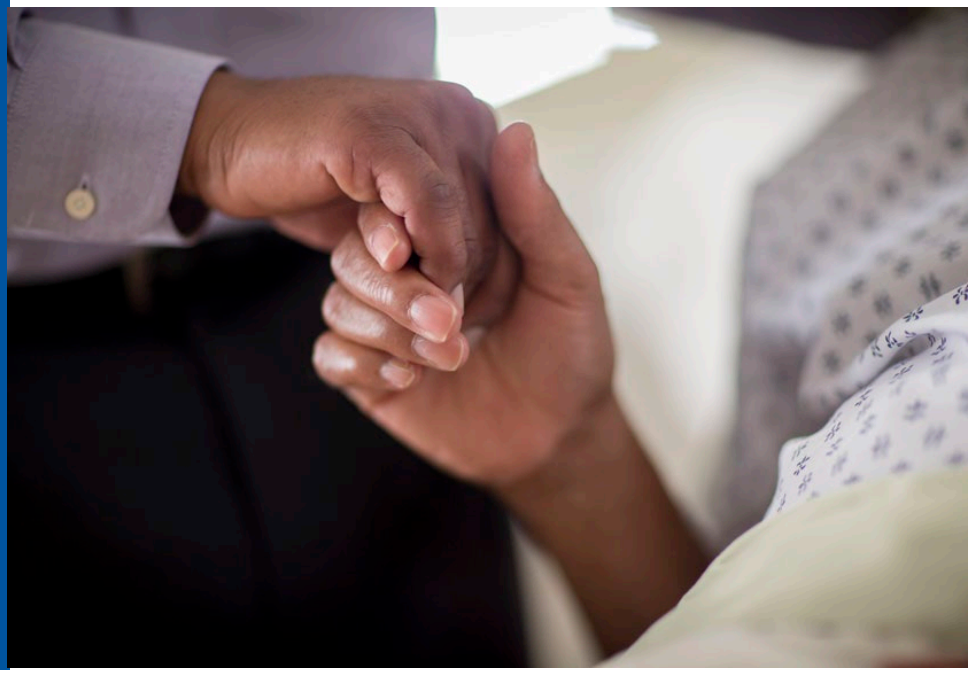
Conditional payment trends, issues, and concerns



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Commercial Repayment Center (CRC) Recovery contractors

CGI FEDERAL	PERFORMANT
Struggled with a new process and Non-Group Health Plan (NGHP) recovery concepts under the MSP.	Struggles with • Backlogs • Slow turnaround times • Mistakes in prematurely dismissing claims • Delays in rendering decisions

2019 will be a critical year for the CRC.

There are positive signs of improvement.

The Benefits Coordination and Recovery Center (BCRC)….

- Recovers conditional payments triggered by the NGHP's reporting of a settlement or judgment via Section 111 MIR.

- Coordinates benefits

- Advises Centers for Medicare and Medicaid Services (CMS) on whether or not to pay a medical bill

  "Your claim has been denied by Medicare because you may have funds set aside from your settlement to pay for your future medical expenses and prescription drug treatment related to your injury (ies)."

Confirming approved MSAs with the BCRC

- The Workers' Compensation Review Contractor (WCRC) is confirming if approved MSAs are funded since the BCRC can see that Total Payment Obligation to Claimant (TPOC) has been reported.
- The WCRC is asking for settlement documents to be sent via the CMS portal so that they can coordinate benefits with the BCRC.

LEGAL OPINIONS, SETTLEMENTS, AND COURT-RELATED MATTERS OF CONCERN

Grimm v. Vortex Marine Constr., No. 18-15104, 2019 U.S. App. LEXIS 11035 (9th Cir. Apr. 16, 2019)

Workers' compensation claim that falls under the Longshore Act.

- The injured worked filed a private cause of action (PCOA) under the Medicare Secondary Payer Act for double damages when the employer did not reimburse "related" medical expenses paid by Medicare.
- Because the ALJ order was not considered "final," the court ruled that the claimant's PCOA for double damages was premature.

LEGAL OPINIONS, SETTLEMENTS, AND COURT-RELATED MATTERS OF CONCERN

United States v. Angino, 2019 U.S. Dist. LEXIS 30499 (M.D. Pa. Feb. 26, 2019)

Conditional payments were verified pre-settlement and the case settled.

- Conditional payments were much higher than anticipated post settlement.
- Since suit was filed in district court, the administrative remedies were not exhausted, and deadline for appealing the redetermination was missed, conditional payment amount was not reduced by the procurement costs.

General CRC procedures to process Conditional Payments

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Identifying cases to work on

- Section 111 Mandatory Reporting
  - Accepted Ongoing Responsibility for Medicals
  - Total Payment Obligation to the Claimant (settlement, judgment, award, payment)

- Coordinated by Benefits Coordination and Recovery Center

- Cases can be reported to BCRC by the beneficiary, their attorney, the carrier/TPA or RRE, authorized Recovery Agent, directly by way of telephone, fax, through the Medicare Secondary Payer Recovery Portal or through the beneficiary's "https://www.mymedicare.gov"

Processing the claim

- Upon development of the lead and review of the beneficiary's common working file, the CRC identifies related services as they correlate to the reported ICD codes.
- A series of letters are generated by the CRC as follows:

CONDITIONAL PAYMENT NOTICE	INITIAL DETERMINATION /DEMAND
30 days to dispute/respond prior to an Initial Determination/Demand letter	• 60 days to make payment • 120 days to file Request for Redetermination • 180 days to file a Request for Reconsideration or make a payment • Interest begins to accrue monthly after 60 days from the issuance date of the letter, at an annual rate of 10.250% every 30 days

Responding if the identified debtor does not challenge or reimburse the CRC

NOTICE OF INTENT TO REFER TO THE DEPARTMENT OF TREASURY	Issued at the 60th day from the date of the Initial Determination/Demand letter
TREASURY COLLECTIONS NOTICE	If the debt is not challenged or paid within 120 days from Demand, the case will be referred to the Department of Treasury for initiation of collection of the debt.
The debt will be referred to one of FOUR COLLECTIONS CONTRACTORS TO PURSUE RECOVERY	Performant/ConServe/Pioneer/The CBE Group
TREASURY REFERS TO THE TREASURY OFFSET PROGRAM	If collections contractor cannot collect, Debt Management Servicing Center applies offset

ORM acceptance CRC's ability to collect Conditional Payments

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What happens when an RRE accepts ORM?

- The Commercial Repayment Center (CRC) seeks recovery when conditional payment is made and assumption for Ongoing Responsibility for Medicals (ORM) is reported via Section 111 MIR regardless of whether there was a settlement.
- When ORM is reported and Medicare is paying for related medicals for workers' compensation and no-fault (medical payments, PIP, etc.), CRC recovery occurs through a Conditional Payment Notice (CPN) which converts to a demand for repayment.
- The RRE communicates to CMS that there is a compensable claim when ORM is accepted and assigned ICD10 codes naming the injuries are deemed compensable.
- By this time, the CRC knows the:
  - CMS date of incident
  - Medicare beneficiary/claimant
  - Injuries for which the employer is assuming responsibility
  - Employer/insurer who is assuming the ORM.

Primary payers termination of ORM and the CRC's capability and authority to continue recovery

What happens when an RRE terminates acceptance of ORM?

When ORM is terminated, CRC closes their case and transitions the case to the BCRC to coordinate the final demand with the beneficiary/counsel

Can the CRC continue its recovery efforts?

If the CRC has issued a CPN or Initial Determination/Demand, they will continue to work the case until the debt is resolved. They will then close the case and it will be transitioned to BCRC for ongoing coordination of benefits

ICD codes when determining due Conditional Payments

Will the CRC only look at reported ICD codes to determine conditional payments?

No. In addition to ICD codes, the CRC also reviews:

- Medical, surgical, and diagnostic procedural codes (CPT)
- Healthcare common procedure coding system (HCPCS) codes which includes ambulance, durable medical equipment (MDE)
- Prosthetics, orthotics and supplies (DMEPOS)
- Diagnosis related groups used to classify hospital cases into groups referred to as DRGs upon admission.

What if reported ICD codes are clearly incorrect, can successful dispute go forward?

If unrelated, pre-existing or co-morbid conditions are reported as ICD codes via Section 111 MIR, CMS assumes that these are the diagnosis for which the RRE may have primary payer responsibility.

Does providing medical evidence/records help to substantiate dispute?

Yes, but will not be enough to be successful until ICD codes inadvertently reported via Section 111 are corrected.

The role of the CRC once TPOC is reported

What is the role of the CRC once a TPOC is reported?

Upon Total Payment Obligation to the Claimant reporting, CRC should close the claim and transition it to BCRC for continued coordination of benefits, identification of further debt and issuance of a Demand

Does the file automatically move over to the BCRC?

As previously discussed, if CRC has issued a CPN or Initial Determination/Demand, they will keep the case open to resolution of the debt, and then move the claim to BCRC

How does the BCRC process the claim?

- BCRC reviews the beneficiary's common working file to identify debt, "sweeping" the services paid and correlating the reported, alleged, claimed or released diagnosis codes to issue a Demand.
- The debt is moved to the beneficiary, and BCRC will pursue recovery of the debt from the beneficiary as ORM has been terminated by the RRE and TPOC reported.
- With ORM termination, the RRE demonstrates that they no longer have responsibility for the medicals, which is why the beneficiary is pursued for recovery.
- While the debt may be moved to the beneficiary, depending on the terms of the settlement agreement, the RRE may have responsibility of the debt through the settlement date.

Navigating claims at the U.S. Department of Treasury

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CRC/BCRC's involvement in cases referred to the U.S. Department of Treasury

- Treasury collections continue to rise in 2019 with many originating as mistaken or premature referrals from the CRC.
- The contract dispute involving the Treasury collection agencies has been resolved, so referrals to the Treasury Offset Program (TOP) are expected to diminish.
- Because Treasury collections and TOP are an effective means for CMS to recovery delinquent MSP debts, those debtors that rely on SSDI, SSI and those states who participate in the State Reciprocal Program (SRP) will have assets intercepted or SS income checks garnished.
- When a delinquent debt is referred to the U.S. Department of the Treasury:
  - The debtor may have options
  - It potentially can be challenged

There are several reasons why a Medicare recovery debt may be referred to Treasury

- If there is a valid basis to contest the items and services demanded, the debt should be challenged, reduced, or eliminated.
- Treasury recovery successes should be sought when:
  - The CRC or BCRC refers the unpaid demand to Treasury in error
  - An appeal is pending a decision
  - Payment was improperly applied to the debt

Best practice for dealing with the U.S. Department of Justice

- Be able to show that you have complied fully with all aspects of Medicare Secondary Payer Act to include resolution of payments Medicare has paid conditioned upon reimbursement that pertain to the underlying claim.

- Include a copy of the settlement language that speaks to what will be reported via Section 111, what and how proceeds will be set aside to pay for future related medical expenses, and language stating how two checks will be disbursed; one to Medicare to ensure that the conditional payments were resolved and reimbursed.

BEST PRACTICE WHEN DEALING WITH THE U.S. DEPARTMENT OF JUSTICE

USDOJ settlement with Maryland Plaintiff Law Firm

- On March 2019 USDOJ reached a $250,000 settlement with Maryland Plaintiff Law Firm, Meyers, Rodbell & Rosenbaum, for failure to repay Medicare Conditional Payments.
- This statutory right to seek reimbursement may be enforced against a primary payer, attorney, or others who have received settlement proceeds

BEST PRACTICE WHEN DEALING WITH THE U.S. DEPARTMENT OF JUSTICE

USDOJ settlement with a plaintiff personal injury law firm based in Philadelphia, PA

- On June 2018, the USDOJ settled with a plaintiff personal injury law firm based in Philadelphia, PA which had failed to repay Medicare for conditional payments pursuant to the Medicare Secondary Payer (“MSP”) Act.
- If the firm violates the terms of the settlement agreement, the USDOJ left the door open to use the federal False Claims Act (“FCA”) to impose additional penalties.

Thank you!

Questions?

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