



Policy: MA.3105
Title: **Medicare Secondary Payer**
Department: Claims Administration
Section: Not Applicable

CEO Approval: /s/ Michael Hunn 04/04/2024

Effective Date: 01/01/2010

Revised Date: 04/01/2024

Applicable to:

- ☐ Medi-Cal
- ☒ OneCare
- ☐ PACE
- ☐ Administrative

I. PURPOSE

This policy describes the process by which CalOptima Health shall identify and recover conditional payments made for Covered Services furnished to Members where Other Health Coverage (OHC) is primary to OneCare, or where another payer (e.g., liability insurance (including self-insurance, no-fault insurance), worker's compensation insurance and/or certain group health plan coverage) is responsible for payment for such Covered Services.

II. POLICY

- A. CalOptima Health OneCare is a Medicare Secondary Payer (MSP) in certain situations, as provided in this Policy. Except for conditional payments, CalOptima Health does not make payment with respect to Covered Services furnished to a OneCare Member where payment has been made, or can reasonably be expected to be made, by a Primary Payer.
- B. CalOptima Health may make a conditional payment for Covered Services where a Primary Payer including self-insurance, no-fault insurance, worker's compensation insurance, and/or certain group health plan coverage, has not made or cannot reasonably be expected to make prompt payment (as defined in Original Medicare) for Covered Services furnished to a OneCare Member.
- C. In the event that a Primary Payer is responsible for payment of Covered Services furnished to a OneCare Member, and CalOptima Health has made a conditional payment for Covered Services, such Primary Payer (or OneCare Member and other party that received the Primary Payer payment) must reimburse CalOptima Health within sixty (60) calendar days from receipt of a Primary Payer payment.
- D. CalOptima Health shall identify payers that are primary and secondary to OneCare, determine amounts payable, and coordinate benefits for OneCare Members with OHC, in accordance with CalOptima Health Policy MA.3103: Claims Coordination of Benefits.
- E. CalOptima Health shall have systems in place to identify, investigate, and document potential MSP situations involving OHC, or other sources of coverage where OneCare is not the Primary Payer.
- F. If a Member receives Covered Services from OneCare that also covered under worker's a compensation law or plan, any liability insurance policy or plan, and/or certain group health plans, CalOptima Health may bill, or authorize a Provider to bill:

1. The insurance carrier, the employer or union, or other entity liable for payment of the services; and
 2. The Member, to the extent that he or she has received payment from the insurance carrier, employer or union, or other entity.
- G. CalOptima Health has the same subrogation and recovery rights as Original Medicare and is obligated to recover conditional payments where OneCare is not the Primary Payer. CalOptima Health shall have systems in place to recover conditional payments made by it where there is OHC primary to OneCare, or where liability insurance (including self-insurance, no-fault insurance), worker's compensation insurance, or certain group health plan coverage is responsible for payment, including through a settlement, judgment, award, or other payment.
- H. CalOptima Health may consider procurement costs actually incurred by a Member in determining the recovery amount due from the Primary Payer. Procurement costs refer to item such as attorney fees, expert witness fees, and court costs paid for by the Member, whether out of the proceeds of a lawsuit or settlement, or otherwise.
- I. CalOptima Health may adopt Original Medicare-approved policies, or guidelines, communicated through the Medicare Secondary Payer Recovery Contractor (MSPRC) applicable to the processing and/or recovery of small settlements, judgments, awards, and other recoveries.
- J. CalOptima Health (and its delegated Providers) retains responsibility to comply with Medicare Advantage MSP obligations. CalOptima Health may contract (subject to adherence to CalOptima Health procurement and other applicable policies) with a vendor(s) to perform specified MSP-related functions and services. Contracted MSP Vendor(s) shall comply with this Policy.

III. PROCEDURE

A. OneCare Coordination of Benefits

1. CalOptima Health shall identify payers that are primary and secondary to Medicare, and shall coordinate OneCare plan benefits to OneCare Members, in accordance with CalOptima Health Policy MA.3103: Claims Coordination of Benefits.

B. OneCare Conditional Payments

1. If CalOptima Health has made a conditional payment for Covered Services furnished to a Member that is the financial responsibility of a Primary Payer, the payment shall be conditioned on reimbursement of that payment by the Primary Payer.
2. Primary Payers and persons, or entities, that receive payment from the Primary Payer (e.g., Member, Member's attorney) must reimburse CalOptima Health within sixty (60) calendar days of receipt of the primary payment, if the Primary Payer is responsible for payment as reflected by a judgment, payment conditioned on the Member's settlement/compromise, waiver or release of payments, or other means.
3. CalOptima Health and its contracted MSP Vendor shall follow the process set forth in Section III.C. of this Policy to identify and recover Primary Payer payments.
4. If CalOptima Health does not receive reimbursement within sixty (60) calendar days of receipt of the primary payment, CalOptima Health may demand payment from the Primary Payer even if such Primary Payer has already reimbursed the Member and/or another party. CalOptima

Health can also take actions necessary and appropriate to recover unreimbursed conditional payments, as provided under Original Medicare rules, subject to any required approvals from the CalOptima Health Board of Directors.

C. Identification and Recovery from Primary Payers Responsible for Payment.

1. Identification of Primary Payments

- a. CalOptima Health shall send claims files to its contracted MSP Vendor in a format specified by OneCare.
- b. The contracted MSP Vendor shall identify subrogation cases and MSP payments for recovery.
- c. The contracted MSP Vendor shall identify and detect sources of Primary Payer liability using current International Statistical Classification of Diseases and Related Health Problems diagnosis codes, or applicable Current Procedural Terminology (CPT) codes, or other appropriate means.
- d. The contracted MSP Vendor shall provide notice of CalOptima Health's right of recovery or reimbursement and the CalOptima Health recovery amount to the appropriate party, or parties. Communications with Members, Member's legal counsel, and/or Primary Payers shall be consistent with CalOptima Health policy.

2. Recovery of Primary Payer Payments

- a. If no legal action is necessary to recover conditional payments, CalOptima Health recovers the lesser of: (1) The OneCare primary payment; or (2) the full payment the Primary Payer is obligated to pay. If CalOptima Health must take legal action to recover conditional payments against the Primary Payer, it can recover twice the amount specified.
- b. CalOptima Health may reduce its recovery to take into account procurement costs if procurement costs are incurred because the claim is disputed, and costs are borne against the Member. CalOptima Health shall adjust its recovery amount for procurement costs in such cases, in accordance with Original Medicare rules.
 - i. If OneCare payments are less than the judgment/settlement amount: (1) determine the ratio of procurement costs to the total judgment or settlement; (2) apply the ratio to the total judgment or settlement payment; and (3) subtract the CalOptima Health share of procurement costs from the OneCare payments. The remainder is the CalOptima Health recovery amount.
 - ii. If OneCare payments equal or exceed the judgment or settlement amount: (1) determine total judgment or settlement amount; (2) determine the procurement costs; and (3) subtract the total procurement costs from the judgment settlement amount. The remainder is the CalOptima Health recovery amount.
 - iii. If CalOptima Health incurs procurement costs because of opposition to its recovery, the recovery amount shall be the lesser of the payment made by OneCare or the total settlement or judgment minus the party's total procurement cost.
- c. CalOptima Health's contracted MSP Vendor shall immediately refer all compromise or waiver requests (of the CalOptima Health recovery amount beyond procurement cost

adjustments) to CalOptima Health. CalOptima Health delegated staff shall review and resolve such compromise or waiver requests, consistent with Original Medicare guidance, where the OneCare payment is less than or equal to twenty-five thousand dollars (\$25,000) and does not involve litigation by or against CalOptima Health. If the OneCare payment exceeds twenty-five thousand (\$25,000), CalOptima Health staff shall refer the request to the CalOptima Health Board of Directors.

- d. All CalOptima Health recoveries which involve legal action of any kind (whether threatened or actual) shall be referred to CalOptima Health's legal counsel for further action including potential referral of the matter to the CalOptima Health Board of Directors, as necessary and appropriate.

3. Reporting

- a. CalOptima Health's contracted MSP Vendor shall submit the following reports to OneCare on a monthly basis, allowing CalOptima Health OneCare to comply with Medicare Advantage reporting requirements:
 - i. Activity Report Summary;
 - ii. Recovery Report;
 - ii. Non-Viable Closed Case Report;
 - iii. Case Status Report;
 - iv. Savings Report; and
 - v. Paid Claims Report.

IV. ATTACHMENT(S)

Not Applicable

V. REFERENCE(S)

- A. CalOptima Health Contract with the Centers for Medicare & Medicaid Services (CMS) for Medicare Advantage
- B. CalOptima Health Policy MA.3103: Claims Coordination of Benefits
- C. "Medicare Secondary Payment Subrogation Rights," Health Plan Management System (HPMS) Memorandum. Issued 12/05/2011.
- D. Medicare Secondary Payer Manual (MSP) Chapter 2: MSP Provisions. Issued 12/28/2023
- E. Medicare Managed Care Manual, Chapter 4: Benefits and Beneficiary Protections. Issued 04/22/2016.
- F. Title 42, Code of Federal Regulations (CFR), Part 411, Subparts B-D
- G. Title 42, Code of Federal Regulations (CFR), §§ 405.378, 411.24, 422.108 and 423.462

VI. REGULATORY AGENCY APPROVAL(S)

None to Date

VII. BOARD ACTION(S)

Date	Meeting
04/05/2012	Regular Meeting of the CalOptima Board of Directors

VIII. REVISION HISTORY

Action	Date	Policy	Policy Title	Program(s)
Effective	01/01/2010	MA.3105	Medicare Secondary Payer	OneCare
Revised	04/05/2012	MA.3105	Medicare Secondary Payer	OneCare
Revised	11/01/2016	MA.3105	Medicare Secondary Payer	OneCare
Revised	12/01/2017	MA.3105	Medicare Secondary Payer	OneCare
Revised	04/01/2019	MA.3105	Medicare Secondary Payer	OneCare
Revised	08/01/2020	MA.3105	Medicare Secondary Payer	OneCare
Revised	06/01/2021	MA.3105	Medicare Secondary Payer	OneCare
Revised	02/01/2022	MA.3105	Medicare Secondary Payer	OneCare
Revised	03/01/2023	MA.3105	Medicare Secondary Payer	OneCare
Revised	04/01/2024	MA.3105	Medicare Secondary Payer	OneCare

IX. GLOSSARY

Term	Definition
Covered Services	Those medical services, equipment, or supplies that CalOptima Health is obligated to provide to Members under the Centers of Medicare & Medicaid Services (CMS) Contract.
Medicare Secondary Payer (MSP)	The term generally used when the Medicare program does not have primary payment responsibility.
Medicare Secondary Payer (MSP) Vendor	Third party vendors contracted to perform administrative functions with regards to the identification and recovery of monies owed to OneCare for recoupment of conditional payments. These administrative duties include, but are not limited to, the pursuit of repayments for third party liabilities and other health care coverage.
Member	A beneficiary enrolled in the CalOptima Health OneCare program.
Original Medicare	The traditional Medicare Fee-for-Service health plan that has two parts: Part A (Hospital Insurance) and Part B (Medical Insurance).
Other Health Coverage (OHC)	Evidence of health coverage other than OneCare including, but not necessarily limited to <ol style="list-style-type: none"> 1. The CalOptima Health Medi-Cal program; 2. Group health plans; 3. Federal Employee Health Benefits Program (FEHB); 4. Military coverage, including TRICARE; 5. Worker's Compensation; 6. Personal Injury Liability compensation; 7. Black Lung federal coverage; 8. Indian Health Service; 9. Federally qualified health centers (FQHC); 10. Rural health centers (RHC); and 11. Other health benefit plans or programs that provide coverage or financial assistance for the purchase or provision of Covered Part D Drugs on behalf of Part D eligible individuals as the Centers for Medicare & Medicaid Services (CMS) may specify.
Primary Payer	Any entity that is or was required or responsible to make payment with respect to an item or service (or any portion thereof) under a group health plan or large group health plan, a worker's compensation law or plan, an automobile or liability insurance policy or plan, including a self-insured plan), or no-fault insurance. These entities include, but are not limited to, insurers or self-insurers, third party administrators, and all employers that sponsor or contribute to group health plans or large group health plans. (See 42 CFR 411.21.)
Provider	Any Medicare provider (e.g., hospital, skilled nursing facility, home health agency, outpatient physical therapy, comprehensive outpatient rehabilitation facility, end-stage renal disease facility, hospice, physician, non-physician provider, laboratory, supplier, etc.) providing Covered Services under Medicare Part B. Any organization, institution, or individual that provides Covered Services to Medicare members. Physicians, ambulatory surgical centers, and outpatient clinics are some of the providers of Covered Services under Medicare Part B.