LASHLY & BAER, P.C.
ATTORNEYS AT LAW

MISSOURI
714 Locust Street
St. Louis, MO 63101-1699
TEL: 314.621.2939
FAX: 314.621.6844
www.lashlybaer.com

ILLINOIS
20 East Main Street
Belleville, IL 62220-1602
TEL: 618.233.5587
By Appointment Only

Primer on Claiming Medicare Bad Debt On Cost Reports

BY: Stuart J. Vogelsmeier

Providers that file Medicare cost reports[1] often seek reimbursement for what are known as "Medicare Bad Debts". Recently, the Department of Health and Human Services Office of Inspector General ("OIG") performed an audit of randomly selected cost reports in which providers claimed Medicare Bad Debts. OIG Report No. A-07-20-02825 December 2022 (the "Audit Report"). The Audit Report provides practical insight for providers in complying with Federal cost report requirements and in the development of policies and procedures related to collecting coinsurance and deductibles from Medicare patients.

Under Medicare Parts A and B, patients may be responsible for coinsurance and deductible amounts related to claims. Some patients, however, may not be able or willing to pay those outstanding amounts. Medicare Bad Debts are defined as amounts considered uncollectible from accounts and notes receivable that are created or acquired in providing services. Provider Reimbursement Manual–Part 1, CMS Pub. No. 15-1, § 302. Federal regulations provide that Medicare is to reimburse providers 65 percent of deductible and coinsurance amounts (Medicare reimbursable amounts) payable by Medicare patients under the following circumstances: (1) the debt must be related to covered services and be derived from deductible and coinsurance amounts, (2) the provider must be able to establish that reasonable collection efforts were made, (3) the debt was actually uncollectible when claimed as worthless, and (4) sound business judgment established that there was no likelihood of recovery at any time in the future. 42 CFR § 413.89(e).

Reasonable Collection Efforts:

According to the Audit Report and published federal guidance, a provider's reasonable efforts to collect Medicare deductible and coinsurance amounts **must be similar to the efforts the provider puts forth to collect comparable amounts from non-Medicare patients.** The collection effort should involve:

- The issuance of a bill, on or shortly after the discharge or death of the patient, to the party responsible for the patient's personal financial obligations.
- Subsequent billings;
- Collection letters;
- Telephone calls; or
- Personal contacts with the responsible party.

A PROVIDER MUST PUT FORTH REASONABLE COLLECTION EFFORTS.

These actions must constitute a genuine, rather than a token, collection effort. The provider's collection effort may include using or threatening to use court action to obtain payment. Provider Reimbursement Manual–Part 1, § 310.

[1] Hospitals, skilled nursing facilities, home health agencies, hospices, renal dialysis facilities, federally qualified health centers, rural health centers, community mental health centers and organ procurement organizations.

In some cases, providers may establish before discharge, or within a reasonable time before the current admission, that the patient was indigent. **Providers can deem Medicare patients indigent when such patients have also been determined eligible for Medicaid.** Otherwise, providers should apply their customary methods that comply with Medicare guidelines for determining indigence of patients. Once indigence is determined and the provider concludes that there has been no improvement in the patient's financial condition, the debt may be deemed uncollectible without applying reasonable collection efforts. Provider Reimbursement Manual–Part 1, § 312.

Policies and Procedures:

Generally, a provider's policies and procedures for collecting Medicare deductible and coinsurance amounts should be similar to its policies and procedures for collecting non-Medicare bad debts. Providers policies and procedures should require the provider to use at least two or more of the following collection efforts:

- Subsequent billings;
- Collection letters;
- Telephone calls;
- Personal contacts with the responsible party;
- Referral to collection agencies; or
- Court action.

During the Audit, the OIG identified some practical problem areas:

- One provider's policy included a procedure to contact patients telephonically to inform them of the amounts due; however, for one of the patients in the sample, this provider had documentation only of statements mailed to the patient and had no documentation of any phone calls.
- One provider had a policy included offering financial assistance if the patient was unable to pay; however, this provider had no documentation supporting that it had offered financial assistance to the individual.

The OIG also indicated that providers that do not comply with their own stated policies and procedures are at an increased risk that they will not comply with Federal requirements. Providers that claim Medicare Bad Debts on cost reports should review policies and procedures, and ensure that the principles set forth in the Audit Report and provider manuals are consistently applies and followed.

Stuart J. Vogelsmeier
Attorney at Law

EMAIL: sjvogels@lashlybaer.com

PHONE: (314) 436-8349

Stuart Vogelsmeier is a partner with the St. Louis law firm of Lashly & Baer, P.C. where he Chairs the firm's Health Care Advisory Team. Mr. Vogelsmeier regularly counsels health care providers on compliance issues, Stark Law and Anti-Kickback Law compliance, corporate structure, employment agreements, joint ventures, adding ancillary services to practices, and asset protection.

This article is for informational and educational purposes only. Providers should contact their advisors for assistance.