

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Refer to: FME 21

FEB 20 1992

Director
Medicaid Bureau

Indemnity Benefit Plans: Third Party Liability
Considerations (Your Memorandum Dated January 15, 1992)--
INFORMATION

Associate Regional Administrator
Region II, New York
Attention: Division of Medicaid

I am responding to your memorandum requesting clarification regarding the treatment of indemnity plans which pay a fixed amount of money to the insured party when he or she becomes an inpatient of a hospital or a long term care facility.

In order to determine the treatment of payments from a specific indemnity plan, the plan must be examined to determine who receives payment, the benefits provided, and the purposes for which the payments may be used. As we discuss below, these factors may be the basis for distinguishing between payments which are considered "income" in eligibility and posteligibility determinations, and payments which are not treated as income at all, but are considered to be a "third party resource" in payment determinations.

In determining whether payments by an insurance policy are counted as income for eligibility purposes, the policies under the State's approved plan govern. In the case of aged, blind, and disabled individuals, the baseline approach is dictated by Supplemental Security Income (SSI) rules. Under these rules, income includes anything received by the individual in cash or in-kind that can be used to meet needs for food, clothing, or shelter (20 CFR 416.1102). If the benefit payments are made directly to the nursing facility, they would not be income under the SSI rules since they were not received by the individual. Furthermore, medical care received would not be in-kind income because it would not meet needs for food, clothing, or shelter. (Amounts paid to the facility for purposes other than medical care may be considered income if the facility would make the money available to the individual which could then be used for food, clothing, or shelter.) Although SSI does not consider institutional medical care to be income for eligibility purposes, SSI reduces benefit

levels to institutionalized individuals when Medicaid pays more than 50 percent of the cost of their care (20 CFR 416.414).

Under SSI rules, insurance payments made directly to an individual are income unless restricted so as to be unavailable for food, clothing, and shelter. Payments restricted to the purchase or reimbursement of medical services covered by that policy would not be income (20 CFR 416.1103(a)(5)). An individualized review of the policy terms would be necessary to determine if the payments are dependent on specific medical expenditures. Of course, treatment of these payments for Medicaid purposes may be more or less liberal than these baseline rules if a State exercises options under section 1902(f) or 1902(r)(2) of the Social Security Act.

Once an individual has been determined eligible for Medicaid, potential third party resources must be considered. Indemnity plans which are restricted for purchase or reimbursement of medical services covered under the policy, which would not have been counted as income, are a potential third party resource which is assignable to the State. Under the cost avoidance payment system that is generally applicable, Medicaid payments must be reduced by the amount of the third party liability (TPL) for the cost of Medicaid services (42 CFR 433.139). (In some circumstances, the Medicaid agency pays the full amount and subsequently seeks reimbursement from the liable third party, in this case, the recipient.)

Indemnity plans which are not restricted for purchase or reimbursement of medical services and are considered income, must be included in posteligibility determinations of the individual's total income in determining the required contribution to the cost of care (State Medicaid Manual section 3701.2). In addition to those benefits considered as income, amounts which were not included in income but are nonetheless available to pay for medical care are included in the posteligibility determination. Thus, benefits which were excluded from income because they were restricted for payment of medical care, but were not so tied to specific items or services in a way to give rise to TPL, should nonetheless be included in posteligibility determinations of the total income available for a contribution to the cost of care.

In any case, the Medicaid agency must have procedures designed to ensure that recipients make timely and accurate

reports of any change in circumstances that may affect their eligibility (42 CFR 435.916(b)). This includes reporting any additional income or resources obtained from indemnity plans that are considered income. In addition, as a condition of eligibility or continued eligibility, the recipient must cooperate in identifying and providing information to assist in pursuing liable third parties (42 CFR 433.147). This includes furnishing information about any indemnity plans that may be a potential source of third party payment to the recipient for medical care.

If you have any questions, please contact Robert Nakielny at FTS 646-4466.

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Christine Nye

BCC: TPL BR, OMM
