

on EPA's proposed decision and collect comments on the proposed decision.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 18, 2003.

Jewell Harper,

Acting Director, Waste Management Division.
[FR Doc. 03-19005 Filed 7-24-03; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 411 and 489

[CMS-1475-FC]

RIN 0938-AM65

Medicare Program; Third Party Liability Insurance Regulations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period removes § 411.54(c)(2) and a portion of § 489.20(g) from our regulations. These regulations were held by a court to be inconsistent with the Medicare Secondary Payer provisions that are found in section 1862(b)(2)(a) of the Social Security Act. Specifically, the court held that § 411.54(c)(2) and a portion of § 489.20(g) are unenforceable to the extent that these regulations require providers and suppliers to only bill Medicare and prohibits them from billing a liability insurer or asserting or maintaining a lien against a beneficiary's liability insurance settlement during the "promptly" period.

DATES: *Effective date:* This final rule with comment period is effective on August 25, 2003.

Comment date: We will consider comments if we receive them at the appropriate address, as provided in the **ADDRESSES** section, no later than 5 p.m. on September 23, 2003.

ADDRESSES: In commenting, please refer to file code CMS-1475-FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services,

Department of Health and Human Services, Attention: CMS-1475-FC, PO Box 8013, Baltimore, MD 21244-8013.

Please allow sufficient time for us to receive mailed comments on time in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-14-03, 7500 Security Boulevard, Baltimore, MD 21244-8013.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available if you wish to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Suzanne Ripley, (410) 786-0970.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are recorded and processed, generally beginning approximately 4 weeks after the publication of the document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786-7197.

I. Background

Under section 1862(b)(2)(A) of the Social Security Act (the Act), Medicare payments may not be made for any item or service for which payment has been made or can reasonably be expected to be made "promptly" (as determined in accordance with our regulations) under a liability insurance policy. The regulations at § 411.54(c)(2) and a portion of § 489.20(g) require providers and suppliers (including physicians) to bill Medicare for Medicare covered services. These regulations also prohibit those providers and suppliers from billing a liability insurer or asserting or maintaining a lien against the beneficiary's insurance settlement, regardless of when the liability insurer

is billed or when the lien is asserted. After the regulations at § 411.54(c)(2) and § 489.20(g) were published, but before the effective date, the American Hospital Association (AHA), filed a lawsuit on behalf of its member hospitals to prevent us from implementing these sections. (See *American Hospital Association (AHA) v. Sullivan*, 1990 WL 274639 (D.D.C. May 24, 1990).) During the litigation, the parties stipulated to allow providers to bill liability insurers or assert or maintain a lien against a beneficiary's insurance settlement.

The court ultimately held that this statutory provision (that prohibits Medicare from making payment where liability insurance that is expected to pay promptly exists) permits a provider to seek payment from insurance or assert or maintain a lien against the beneficiary's insurance settlement during the "promptly" period. Therefore, we were unable to implement § 411.54(c)(2) and the portion of § 489.20(g) that states, "except when the primary payer is a liability insurer and except as provided in paragraph (j) of this section." The court took no action affecting existing special rules for Oregon. The court also did not address billing a liability insurer or asserting or maintaining a lien after the expiration of the "promptly" period. The AHA decision has not been appealed. Therefore, to the extent that § 411.54(c)(2) and a portion of § 489.20(g) are inconsistent with the court's decision, they are unenforceable.

In light of the AHA decision, we are continuing the policy which we stipulated during the AHA case with respect to all providers and suppliers (including physicians); that is, we are allowing them to bill liability insurers or assert or maintain liens on a beneficiary's liability insurance settlement rather than billing Medicare. The Commerce Clearing House, Inc. (CCH) published two policy memoranda that addressed the issue of billing a liability insurer or asserting or maintaining a lien against a beneficiary's liability insurance settlement, referring to the holding in the AHA case. (Medicare & Medicaid Guide (CCH) 45, 187 at 53, 508-53, 512 (1997). The first policy memorandum entitled, "Provider and Supplier Billing When Medicare is Secondary Payer to Liability Insurance—Information", is dated August 21, 1995. The second policy memorandum entitled "Charges to Beneficiaries and Handling Improper Collections By Providers and Suppliers When Medicare is Secondary Payer to Liability Insurance—Action", is dated March 12, 1996. These memoranda can