

Medicare's Interest in Workers' Compensation Cases

Centers for Medicare & Medicaid
Services (CMS), Region 10
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Medicare Secondary Payer Statute

- Section 1862(b) of the Social Security Act [42 U.S.C. §1395y(b)(2)]
 - Medicare is precluded from paying a beneficiary's medical expenses when payment *has been or can be reasonably expected to be made* under a workers' compensation plan
 - CMS and its providers and suppliers must ask beneficiaries about payers that may be primary to Medicare

Medicare's Dual Interests in WC Settlements

- Past Medicals
 - Subrogation interest to recover any conditional or mistaken payments
 - Medicare may recover in the absence of a WC settlement
- Future Medicals
 - Workers' Compensation Medicare Set-Aside (WCMSA) established to pay for *future* WC injury-related, Medicare-covered services

Medicare's *Past* Interest

- Arises when a Medicare beneficiary has an *accepted* WC claim
 - Medicare will deny payment for injury-related claims and,
 - Will issue demand for repayment to the WC carrier
- Arises whenever a Medicare beneficiary receives a lump sum WC settlement

Medicare's *Future* Interest

- Arises when a WC lump sum settlement:
 - Intends to award the claimant for future medical and/or future prescription drug benefits,
 - And/or releases the WC carrier from future responsibility for medical and/or prescription drug benefits



Questions ?

Notifying Medicare

- “Mandatory Insurer Reporting” ~ implementation on July 1, 2009
 - Section 111 of the Medicare, Medicaid and SCHIP Extension Act (MMSEA) of 2007
 - Stay tuned for regulations from CMS at:
<https://www.cms.hhs.gov/MandatoryInsRep/>

But for now.....

First Contact With Medicare

Coordination of Benefits Contractor (COBC)

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CMS Claims Investigation

PO Box 33847

Detroit, MI 48232

-or-

1-800-999-1118

Recovering *Past* Payments

- Separate from the WCMSA process
 - Medicare may initiate recovery of mistaken payments from WC carrier prior to a settlement
 - Medicare will initiate demand for conditional and any un-collected mistaken payments at the time of settlement
- Medicare Secondary Payer Recovery Contractor (MSPRC)

MSPRC

- Contract effective 10/2/2006
- Single recovery contractor for all non-provider MSP debt
- Contact information:

MSPRC/WC

PO Box 33829

Detroit, MI 48232-3829

Phone: 866-677-7220 Fax: 734-957-0998

Protecting Medicare's *Future* Interest

- WCMSA Basics:
 - WCMSA funds should be sufficient to last the remainder of the claimant's estimated life expectancy
 - WCMSA funds may ONLY be used to pay for injury-related services and/or prescription drugs that would otherwise be covered by Medicare
- Decisions regarding WCMsAs are independent of any decision regarding any claims that Medicare may have paid in the past

WCMSA Review Thresholds

CMS will review WCMSA proposals in the following two situations:

- Claimant is currently entitled to Medicare and the total settlement amount is greater than \$25,000.00
- Claimant has a *reasonable expectation* of Medicare enrollment within 30 months **AND** the total settlement amount is greater than \$250,000.00



Review Thresholds cont.

- NOTE: CMS review thresholds are **NOT** a substantive dollar or “safe harbor” threshold.
- Review thresholds are based on CMS workloads and are subject to change
 - Changes will not take effect retroactively

The Total Settlement Amount (TSA)

- Computation of the TSA includes, but is not limited to:
 - Wages
 - Attorney fees
 - All future medical and prescription drug expenses
 - Repayment of any Medicare conditional payments
 - Any previously settled portion of the WC claim
- Payout totals for all annuities must be used NOT cost or present values

What is *Reasonable Expectation*?

- Medicare entitlement – generally
 - Age – if claimant is 65 year or older
 - Disability – if the claimant has been receiving Social Security Disability (SSD) benefits for 24 months or more
 - ESRD – if claimant has been diagnosed with End Stage Renal Disease

Reasonable Expectation cont..

- Reasons include but are not limited to:
 - Claimant has applied for SSD benefits;
 - Claimant has been denied SSD benefits, but anticipates appealing that decision;
 - Claimant is in the process of appealing and/or re-filing for SSD benefits;
 - Claimant is 62 ½ years old; or
 - Claimant has an ESRD condition but has not yet qualified for Medicare

For the status of a claimant's Medicare entitlement, contact the Social Security Administration:

1-800-772-1213

<http://www.ssa.gov/>

WCMSA Proposal Mechanics

- See the WCMSA checklist for a detailed list and explanations of the required documents

- Submit WCMSA Proposals to:

CMS c/o COBC

PO Box 33849

Detroit, MI 48232-3849

Mechanics cont...

- COBC scans received WCMSA proposal into the Workers' Comp. Case Control System (WCCCS)
- Case sent electronically to independent review contractor
 - Contractor develops for any missing documentation
 - Makes independent recommendation for WCMSA
- Case and contractor recommendation forwarded to CMS Regional Office for resolution

Processing Times

- *Clean* WCMSA proposal reviewed/approved within 60-90 days
- Disputes with new supporting documentation reviewed within 60-90 days
- Disputes without new supporting documentation - depends

Top 10 Submitter Errors

1. Incorrect SSN/HIC # on cover letter
2. Commingled files (e.g. medical records for two different claimants in one submission)
3. No “consent to release” form signed by claimant
4. Fee schedule v. actual charge either not stated or conflicting info
5. Not indicating State of Jurisdiction

Top 10 Submitter Errors cont...

6. No recommended future prescription drug amount
7. Not separating the total proposed WCMSA into an amount for future medicals and future prescription drugs
8. Final settlement document never submitted
9. Sending WCMSA proposal to MSPRC
10. Not providing initial deposit/seed money for a structured WCMSA

Useful Websites

- Medicare

<http://www.medicare.gov/>

- COBC

<http://www.cms.hhs.gov/COBGeneralInformation/>

- WCMISA Submissions

http://www.cms.hhs.gov/WorkersCompAgencyServices/01_overview.asp#TopOfPage

- MSPRC

http://www.cms.hhs.gov/MSPRGenInfo/01_Overview.asp#TopOfPage



Questions ?

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Thank You!