MEDICARE UPDATE

Presented by Merrilee Harrell January 6, 2012

WHO IS "MEDICARE"

CMS - Centers for Medicare & Medicaid Services (under HHS)

COBC - Coordination of Benefits Contractor

WCRC - Workers' Compensation Review Contractor

MSPRC - Medicare Secondary Payer Recovery Contractor

* New Contractor as of 10/1/11: Group Health, Inc. (EmblemHealth?)

WHAT'S NEW?

- WCMSA Portal
- Cases

Haro v. DHHS (5/5/2011) - re appeal of conditional payments

- Medicare can recover from carrier
- beneficiaries have appeal rights
- If CMS cannot recover from beneficiary, may proceed against primary plan
- Collection activities tolled during appeal as to beneficiaries and their attorneys

Hadden v. U.S., 09-6072 (FED6) (11/21/11)

- Medicare entitled to full recovery of payments it has made from the proceeds of settlement, regardless of any compromise, fault, or non-medical allocations such as pain and suffering.
- Hadden argued that settlement represented only 10% of his medical expenses; remaining amount represented non-medical compensation, such as pain and suffering
- MSP requires reimbursement where responsibility demonstrated via judgment, settlement, or other means. 42 U.S.C. 1395y(b)(2)(B)(ii)
- Reflects CMS policy of refusing to recognize allocations unless through hearing on the merits

MEDICARE "CONDITIONAL PAYMENTS" (LIEN)

Determining Amount Before settlement:

- COBC: 1-800-999-111
 - interim CPL issued approx 90 days later
 - final CPL only after settlement
- MyMedicare.gov

After settlement:

CP report usually comes automatically after filing final settlement with COBC

- Beneficiary may receive subsequent reports after settlement if Medicare questions whether charges should have been paid out of WCMSA
- Analyze payment summary
 - Often contains errors
 - Prepare written response to MSPRC
 - Be aware of deadlines inaction may result in referral to Dept. of Treasury
- Demand letter
 - appeal -> will be "worked" prior to referral to Treasury Dept.
 - no payment -> interest starts in 60 days appeal does not stay interest!
- If CMS must take legal action to recover, may recover 2x amount of the primary payment

Exposure

- Medicare can recover only if judgement or settlement
- CMS may deny payment for services up to settlement amount
- If settlement appears to shift responsibility to Medicare, may not be recognized (lien will accrue)
- Medicare does not pay until amount allocated to medical is exhausted

Pending legislation / ABA Resolution

- H.R. 1063
 - timely statement of reimbursement amount
 - appeals process
 - statute of limitation

Resources

- CMS: www.cms.hhs.gov/workerscompagencyservices
- MSPRC: msprc.info
- Medicare: www.medicare.gov
 - "Medicare & You"
- mymedicare.gov claimant's attorney can gain access through client

Rick Swedloff, Can't Settle, Can't Sue: How Congress Stole Tort Remedies from Medicare Beneficiaries, 41 Akron L. Rev. 557 (2008)

Nicole Miklos, Note: Giving an Inch, Then Taking a Mile: How the Government's Unrestricted Recovery of Conditional Medicare Payments Destroys Plaintiffs' Chances at Compensation Through the Tort System, 84 St. John's L. Rev. 305 (Winter 2010).

Payment Summary Form

Dec 20, 2011 09:05 AM

Report Number: RMCAN-5-5	
Benificiary Name: L	Case Type: E - WORKER'S COMPENSATION
Beneficiary HICN: ;	Date of Incident Oct ()
Case ID	

TOS	ICN	Line		Provider Name	Diagnosis Codes	From Oate	To Dale	Total	Reimbursed Amount	Conditional Payment
			Confractor		7220					11111111111111111111111111111111111111
71	\$40209023711380	1	1102						\$2056	
71	540200029042080	1	1102		72210, 72402, 7244	01/17/2009	01/17/20 06	\$475.00	\$347.98	\$347.98
71	540200035584680	1	1102	_	72202, 72100, 72402, 7244	01/19/2009	0111875.000	\$235.00	\$24.55	\$74.55
71	540200635715280	1	100	_	72202	01/19/2009	B1219/2000	\$1,500.00	\$253.20	\$263.70
71	540200035584090	1	102	-	7729	01/19/2009	01/19/2000	\$616.00	M3.26	\$63.26
71	5402090352554690	2	1902	_	72252	01/19/2009	\$1/19/2009	\$250.00	\$0.00	\$0.00
71	540209254007610	1	102	_	72252	01/19/2009	\$1/192000	\$616.00	\$0.00	\$0.00
71	540209254007610		1102	-	72.62	01/19/2009	01/19/2009	\$250.00	2249	\$22.49
71	540209042582810	1	1102	-	7222	01/30/2009	01/30/2009	\$1,500.00	\$28 3.70	\$263.70
71	\$4020BC431 B4760	1	1102	_	77252	01/30/2009	01/30/2009		¥32 6	
71	\$40209043194760	2	1102	_	1444	G1/30/2009		\$250.00	300 0	\$0.06
71	540200259005590	1	1102	_	72252	01/30/2009	01/30/2009	\$616.00	\$0.00	\$0.00
71	500000289006500	2	1102	-	7252	01/30/2009	@1/30/2006	\$250.00	52249	\$22.49
71	540200043194280	1	1102	_	7252,72190,7244	02/02/2009	02002/2000	\$235.40	175.13	\$75.33
71	540209843178420	1	1102	_	77252	02/02/2009	5202/2009	\$1,500.00	\$203.20	\$263.70
71	540209043154290	1	1102	_	7222	02/02/2009	62/02/2009	\$934.00	\$9,106	\$8 1.06
71	540209045164290	2	1102		T1250	02/02/2009	02/02/2009	\$250.00	\$0.00	\$0.00

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