

RUSSELL, WAGG, GABBERT & BUDZINSKI

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

510 L STREET, SUITE 300  
ANCHORAGE, ALASKA 99501-1952  
TELEPHONE (907) 258-1747  
FACSIMILE (907) 258-5546

RICHARD L. WAGG  
ROBIN JAGER GABBERT  
MICHAEL A. BUDZINSKI  
DAVID D. FLOERCHINGER  
JOSEPH M. COOPER  
ROBERT J. BREDESEN  
MICHELLE M. MESHKE

MERRILEE S. HARRELL  
ERIN K. EGAN  
VICKI A. PADDOCK

OF COUNSEL  
KAREN L. RUSSELL  
DONALD W. EDWARDS  
ELIZABETH D. GOUDREAU

**Alaska Bar Association - Workers' Compensation Section Meeting**  
**Medicare Update by Merrilee Harrell**  
January 3, 2014

**CMS REVIEW SUBMISSION GUIDELINES**

- Updated *WCMSA Reference Guide* (Nov. 6, 2013)
- Most common problems that halt the review process:
  - Insufficient medical records
  - Insufficient payment histories

**MSAs and Rx ALLOCATIONS**

- Problems:
  - Lifetime calculation based on two-year snapshot without consideration for weaning, tapering, elimination of drug entirely if condition improves, etc.
  - Must show tapering is actually underway or that medication has been eliminated completely for 3-6 months
  - Patent expiration not considered
- Attempts to reduce Rx allocation in MSAs
  - AS 23.30.095(n) re generic drugs
  - Letter from treating listing Rx dosages, anticipated length of use, whether generic acceptable, whether drug has been discontinued or is unrelated

## **SMART ACT: RULEMAKING PROGRESS**

- 42 CFR 411.39 (effective 11/19/13)
  - Process for obtaining conditional payment amount before settlement
  - Expands existing portal
  - Can use portal to dispute claims and upload settlement info using info provided in CPL
  - Some additional changes starting 1/1/16 (i.e. won't need CPL)
- Process:
  - Parties: beneficiary, beneficiary representative, applicable plan
  - Put M/C on notice of pending settlement 185 days before anticipated settlement date
  - CMS has 65 days to post conditional payments (can be extended by 30 days, or more for "exceptional circumstances")
  - Within 120 days of settlement, beneficiary or representative may "once and only once" notify CMS of settlement expected to occur within 120 days, and ask for "claims refresh"
  - Beneficiary/representative [not "applicable plan"] may "once and only once" [not in statute] dispute most recent CPL [what if case doesn't settle?]
  - Disputes to be resolved within 11 business days
  - No appeals process for above, "there shall be no administrative or judicial review of the Secretary's determinations under this subclause."
- Conditional Payment Resolution
  - Once dispute is resolved, do final claims refresh within 3 days of settlement
    - Medicare will honor final number
    - Be prepared to obtain Board approval within 3 days
  - Submit final settlement info to CMS via portal within 30 days; CMS will then calculate pro rata deduction and issue final settlement demand
  - Failure to timely provide settlement info voids conditional payment amount

## **WCMSPRP (Portal)**

- Should claimants' attorneys get set up on portal?
- Currently provides only total amount, no details about DOS, provider, etc.
- 2016: more detail; Applicable Plan access only by consent of beneficiary
- Can only be accessed once you have Case ID/ReMas#, which you can only get from "Rights and Responsibilities" letter or "Conditional Payments" letter.
  - - one of these letters may already have been generated due to MIR
  - - if not, provide notice to COBC, which will generate detailed CPL ~65-95 days
- Portal can be used to report final settlement, which will trigger final demand letter.