# Medicare's Interest in Workers' Compensation Cases

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# Medicare Secondary Payer Statute

# Section 1862(b)(2) of the Social Security Act (42 USC 1395y(b)(2))

- No Medicare payment (except conditionally) for any item or service to the extent that payment has been made or can be reasonably expected to be made under an automobile or liability insurance plan
- Repayment of conditional payments required
  - US Government may take action against any responsible/required entity

# Protecting Medicare's Interests

- Avoid making incorrect primary payments
  - Coordination of Benefits Contractor (COBC)
  - MMSEA §111 ~ Mandatory Insurer Reporting
- Recovering mistaken primary payments
  - Medicare Secondary Payer Recovery Contractor (MSPRC)
- Workers' Comp Medicare Set-Aside (WCMSA)
  - Workers' Compensation Review Contractor (WCRC)
  - Regional Office

### Coordination of Benefits Contractor

- Maintains the Common Working File (CWF)
- Responsible for Mandatory Insurer Reporting data processing
- Should be an attorney's first contact with Medicare\*

(800) 999-1118
CMS Claims Investigation
PO Box 33847
Detroit, MI 48232-3847

# Mandatory Insurer Reporting

- Medicare, Medicaid SCHIP Extension Act (MMSEA) of 2007, §111
- Effective 1/1/2010 for Liability/No-Fault/Workers' Compensation
  - RRE's have until first calendar quarter of 2001 to submit first production claim input file
- Single source of information from CMS is:

http://www.cms.hhs.gov/MandatoryInsRep/

# Medicare Secondary Payer Recovery Contractor (MSPRC)

- Issues *Demand Letters* 
  - Note: Workers' Comp. demands are generally issued to the carrier as soon as MSPRC is aware of mistaken payments.
  - Upon lump sum settlement demand issued to beneficiary/attorney
- Issues *Conditional Payment* letters upon request
- Processes first level appeals and waiver requests
- Refers debts to Department of Treasury for collection once they are over 181 days delinquent per the Debt Collection Improvement Act of 1996





On April 14, 2010 from 1:00pm - 3:00pm (EDT), the MSPRC will host a Town Hall Meeting regarding "Changes in the MSPRC Conditional Payment Process for Liability Insurance, No-Fault Insurance, and Workers' Compensation Cases."

This Town Hall Meeting will provide education on the New Conditional Payment Notice and Process, as well as updates or

- The MSPRC Recovery Process & Timelines
- · The Rights and Responsibilities Letter
- · Proof of Representation vs. Consent to Release
- · What's new with the MSPRC

# **MSPRC**

www.msprc.info

(866) 677 - 7220

Fax: (734) 957-0998

MSPRC - WC PO Box 33831 Detroit, MI 48232-3831

# Recovering Conditional Payments

#### 42 CFR §411.21

 Conditional payments are Medicare payments for services for which another payer is responsible, made either on the bases set forth in subparts C through H of 42 CFR §411, or because the Medicare Administration Contractor (MAC) did not know that another payer was primary.

#### 42 CFR §411.24

- CMS has a direct right of action to recover from any entity responsible for making primary payment
- CMS has a right of action to recover from any entity, including beneficiary, provider, attorney, state agency, insurer, that has received a third party payment

#### 42 CFR §411.26

- CMS is subrogated to any individual, provider, private insurer, state agency, attorney or other entity entitled to payment by a third party payer
- 42 CFR §411.47
  - Calculating Medicare's recovery amount. Medicare reduces its recovery to take into account the cost of procuring the judgment/settlement

# WCMSA's

- Medicare's "future interest" arises when a Workers' Comp. lump sum settlement:
  - Intends to award the Claimant for future medical and/or prescription drug benefits,
  - And/or releases the WC carrier from future responsibility for medical and/or prescription drug benefits.

# CMS Review of WCMSA is Recommended When:

- Claimant is currently entitled to Medicare (Part A, Part B, or both) <u>and</u> the total settlement amount >\$25,000
- Claimant is reasonably expected to become entitled to Medicare within 30 months <u>and</u> the total settlement amount >\$250,000
- NOTE: Review thresholds are not intended to create a safe harbor. Parties should consider Medicare's interest regardless of CMS review.

## **WCMSA Basics**

- WCMSA funds should be sufficient to last the remainder of the claimant's estimated life expectancy (unless documented otherwise).
- WCMSA funds may <u>ONLY</u> be used to pay for injury-related services that would otherwise be covered by Medicare.

# Pricing for Prescription Drugs

- On June 1, 2009, CMS began independently pricing future prescription drug costs where the Workers' Comp. injury warrants ongoing prescription drug treatment.
- Refer to the "CMS Prescription Drug Set-Aside Guidance for Submitters" memorandum.

# Denied or Disputed Liability

- CMS will approve a "Zero (\$0) Set-Aside) when:
  - Carrier has not made <u>any</u> indemnity or medical payments on the claim
  - Medical documentation demonstrates that no future treatment needed and settlement does not include money for future medicals
  - Court of competent jurisdiction has ruled on the merits of the case that carrier is not responsible for treatment related to the claim

# Administering a WCMSA

- Claimant may self-administer as long a SSA has not identified the need for a Rep Payee
- WCMSA funds must be placed in a separate, interest bearing account
- WCMSA funds must not be used to pay for services/supplies that would not be covered by Medicare
- Annual attestation forms must be sent to MSPRC each year (on anniversary date of WCMSA)

# **Useful Websites**

- www.cms.hhs.gov/WorkersCompAgencyServices
- www.msprc.info
- http://www.cms.hhs.gov/MandatoryInsRep/
- http://www.cms.hhs.gov/manuals/downloads/ msp105c07.pdf

## Seattle RO Contacts

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# Questions?