Medicare Compliance Strategies and Tools

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Acronyms

- MSP – Medicare Secondary Payer Statute
- CMS - Centers for Medicare And Medicaid Services
- SSD – Social Security Disability
- RRE – Responsible Reporting Entity
- MSA – Medicare Set-Aside
- MCP – Medical Cost Projection
- CRC – Commercial Recovery Center
- BCRC – Benefits Coordination Recovery Center
- MSPRC – Medicare Secondary Payer Recovery Contractor
- MIR – Mandatory Insurer Reporting (Section 111)

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What Is Important?

- Benefit verification
- Allocation of medical
  - 42 CFR 411.46
  - WCMSA published standards
- Application of state law
- Lien identification and resolution
- Release language

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How To Become Medicare Entitled

- Age
  - 65 years of age or older
- Diagnosis
  - ALS and/or end-stage renal
- Social Security Disability (SSD)
  - Earnings based
  - Precursor to Medicare

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Medicare Entitlement Continued

- Other qualifying events
  - Piggyback on parental benefits
  - Non-qualifying buy in
- Associated benefits
  - Supplemental Security Income (SSI)
  - Medicaid
  - Veterans Affairs (VA)
  - Tricare

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Worker Compensation Medicare Set-Asides

- 42 CFR 411.46
  - Commutation v. Compromise
    - **(a)*Lump-sum commutation of future benefits.*** If a lump-sum compensation award stipulates that the amount paid is intended to compensate the individual for all future medical expenses required because of the work-related injury or disease, Medicare payments for such services are excluded until medical expenses related to the injury or disease equal the amount of the lump-sum payment.

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Worker Compensation Medicare Set-Asides

- 42 CFR 411.46
- **(b)*Lump-sum compromise settlement.***
  - **(1)** A lump-sum compromise settlement is deemed to be a workers' compensation paymentfor Medicare purposes, even if the settlement agreement stipulates that there is no liability under the workers' compensation law or plan.

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Worker Compensation Medicare Set-Asides

- 42 CFR 411.46
- **(b)*Lump-sum compromise settlement.***
  - **(2)** If a settlement appears to represent an attempt to shift to Medicare the responsibility for payment of medical expenses for the treatment of a work-related condition, the settlement will not be recognized.
- Maximization example

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Worker Compensation Medicare Set-Asides

- WCMSA thresholds for review and approval:
  - The claimant is Medicare entitled and the total settlement value exceeds $25,000; or
  - The claimant has a reasonable expectation of receiving Medicare benefits within 30 months of the claims settlement
  - A “Reasonable expectation” is defined as a claimant…….
    - Being 62.5 years of age or older
    - Having an SSD application or appeal of a denial pending
    - Who had a prior receipt of SSD or Medicare benefits

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Worker Compensation Medicare Set-Asides

- Non-threshold cases:
  - The WCMSA thresholds are work-review guidelines and not safe-harbors from liability. Non-threshold MSAs should be considered when:
    - The claimant has substantial medical needs/catastrophic case
    - There is a high settlement value (TBD)
    - Assistance is needed to value the medical
  - If an MSA is not done, future medical should still be addressed in the settlement documents

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Worker Compensation Medicare Set-Asides

- Zero MSAs
  - Denied claims with no medical and no indemnity paid
  - If payments were made a zero may still be possible if:
    - The payments are not considered “medical” or “indemnity”
    - The payments can be cured
    - State law permits an investigatory period
    - Working with local counsel
  - In some scenarios, a legal opinion instead of an MSA may be appropriate

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Vendor Practices and Considerations

- Traditional MSAs
- Non-Submit MSAs
- Evidence Based Medicine MSAs
- Legal based/involved MSAs
- Legal opinions
- Bundled services
- Insurance programs

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Vendor Practices and Considerations

- Ask yourself…
  - What vendor type am I dealing with?
  - What is the cost versus value?
  - What services are they offering (and why)?
  - Does the MSA look accurate and in accordance with the claim and state law?
  - What kind of collaboration is there between me (claims), counsel and the vendor?

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Lien Resolution

- Workers Compensation Process
- Part C and D Liens
- Strategies for Reduction of Liens

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Workers' Compensation Medicare Liens

- Carrier/Self-Insured will be identified as the debtor by reporting of ORM through Section 111 obligations or by a direct report from the beneficiary
- All recoveries for claims with a DOI after October 5, 2015 where an insurer/workers' compensation entity are identified as the debtor will be handled by the CRC
- ICD 9/10 Codes reported through ORM form the basis for Medicare's conditional payment investigation

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Workers' Compensation Medicare Liens

- If claim is reported by the beneficiary before Section 111 reporting occurs, the CRC will issue a Conditional Payment Letter ("CPL")
- NOT a Demand and amount is not final
- Statement of Reimbursement/Payment Summary Form
- Decision to dispute now or at settlement
  - Consent to Release
- Medicare Secondary Payer Recovery Portal
  - https://www.cob.cms.hhs.gov/MSPRP/home

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Workers' Compensation Medicare Liens

- Notice of Settlement, Judgement, or Award will trigger the CRC to issue Conditional Payment Notice ("CPN") - NOT a Demand and amount is not final
- 30 days to dispute charges or Demand will be made
- Debtor has 60 days from issuance of Demand to reimburse Medicare; interest accrues from date of demand
- Debtor has 120 days to file appeal of Demand, but the interest continues to accrue during appeal
- Referral of debt to Department of the Treasury occurs at 120 days from Demand if no payment or appeal is made

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Resolution of Part C and D Liens

- Part C - Medicare Advantage Plans
- Part D – Prescription Drug Plans
- 42 USC 1395y(b)(3)(A) – Private cause of action
- *In re Avandia Mktg.*, 685 F.3d 353 (3d Cir. 2012)
- No defined process
- Disclosure from the beneficiary
- Apply same strategies for resolution as you would for Part A and Part B "traditional" Medicare liens

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Strategies for Resolving Liens

- Careful review of the asserted charges
- Challenging Primary Payer Status/Denied Claims
- Respond timely to preserve appellate options

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Strategies for Resolving Liens

- Reduction of the lien based on procurement costs
  - Beneficiary is the debtor
  - 42 CFR 411.37
- Have a plan before the case settles
- Work together
- Follow through

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The Importance of Medicare Reporting

- Assigned primary payer status
  - Beneficiary v. Carrier/Self-Insured
- Timing of primary payer status
  - During the claim v. Settlement, judgement award
- Identified debtor by CMS
  - Type, timing and benefits
- Areas of compliance
  - MSAs, liens and reporting

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Other Benefit Questions/Issues

- "Other benefits"
  - VA
  - Tricare
  - Medicaid
- Medicaid Liens
  - Ahlborn fix (only recovery from the medical portion of the claim)
  - Medicaid Set-Asides

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