

Liability Medicare Set-Asides: Coming to you in 2018and much more.



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Agenda

- **MSP Compliance Updates**
 - New Contractors, WCRC and CRC
 - Obstacles with the new CRC policy
 - MIR User Guide Update: ORM Termination
 - Medicare Advantage Plan (MAP) Litigation
 - PAID Act Introduction
- **LMSAs**
 - Background
 - What the LMSA Review Process Should Look Like v. Reality of CMS' Ideas
 - What the Industry Can Do to Get in Front of LMSA Reviews?

Commercial Repayment Center (CRC) Transition

- Performant Currently the New Recovery Contractor
- Replaced CGI as of 2/12/2018
- Issues with the CRC–
 - When Performant came on board, it emphasized No Change in CMS Policy; However:
 - The industry was experiencing issues with CRC sending numerous debts to Treasury even after an appeal has been filed (either for redetermination or with the Qualified Independent Contractor (QIC))
 - MARC Resolution of this Issue: CMS will now place a hold on all claims for 60 days following a denial of reconsideration, denial of a QIC review, or denial at the ALJ level before referring the case to Treasury. CMS has instructed the CRC to implement the change, which should take place June 15th or shortly after.



Workers' Compensation Review Contractor (WCRC) Transition

- Transition from Provider Resources to Capitol Bridge LLC occurred Mid-March
- Like CRC, WCRC/CMS Emphasized No Change to Policy Application
- Turnaround times slightly longer than prior contractor, now about 30-45 days whereas it used to be 20-30 days.
- Less Turbulent than Prior Transition (2011)
- What to Watch For –
 - Contractor to Review LMSAs/NFMSAs by July 1, 2018?
 - Trend toward Usage of Non-Submit MSAs due to expensive prescription costs
 - Likely that LMSAs will trend toward Non-Submit MSAs due to the same reason



MIR User Guide Adds Guidance on ORM Termination

- Version 5.3 Released 12/15/2017
- Always Read Beyond the Updates
- Replaced Chapter III, Section 6.3.2 with ORM Termination
- MARC Requests for Broader Changes Remain Unanswered
- Is Practical Likelihood = to Reasonable Degree of Medical Certainty? See Section 4.2 of WCMSA Reference Guide.



Medicare Advantage Plan Litigation Update

- Current Circuits Finding in Favor of MAPs having MSP Private Cause of Action Double Damages Rights: 3rd and 11th Circuits (NJ, DE, PA, AL, GA, FL)
- More Regional Courts Finding in Favor of MAPs
- Potential for 2nd and 5th Circuit Rulings due to pending litigation
- MSP Recovery LLC continuing to file litigation nationwide against various entities



PAID Act

- “Provide Accurate Information Directly” (PAID) Act Introduced in the House as HR 5881 May 2018.
- Co-sponsored by Congressmen Bilirakis and Kind.
- Expected to be introduced in the Senate this summer.
- The PAID Act requests that CMS provide Medicare Advantage, Medicare Part D, and Medicaid enrollment information to the Responsible Reporting Entity (RRE) in the Query Response File.
- CMS Currently Provides this Information in the Response File with Non-Group Health Plans (NGHPs)



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- Background of CMS Activity on LMSAs
- Sally Stalcup Memo (May 2011)
- CMS Issue Memo that no LMSA is Required if Treating Physician Certifies no Future Treatment (September 2011)
- CMS Releases ANPRM on MSP and Future Medicals (2012)
- Industry protests through commentary on proposed rule
- Through efforts of MARC, ANPRM is withdrawn (2014)



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- Amended RFP Increased Optional LMSA & NFMSA from 19,700 to 31,000 approvals
- Capitol Bridge LLC Awarded Agreement – 9/1/2017
- Included Optional LMSA/NFMSA Volumes to Commence 7/1/2018
- No Word from CMS About LMSA/NFMSA Policy
- Until MLN Notice to Providers Indicating Movement Toward Voluntary Review Policy



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- MARC Meets to Discuss Options
- Arranges CMS Face to Face Meeting Days Before 10/1/2017 Deadline
- Reinforces Importance for CMS to Consider Stakeholder Input
- Understands from CMS No Implementation Until Stakeholder Feedback is Secured
- Voluntary Review Policy is on CMS Radar for Implementation



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- CMS Rescinds MLN Announcement
- MARC and Industry Applaud CMS Indication to Listen to Stakeholders
- Uncertainty of “when” CMS will take Next Step
- MARC Takes Action with Stakeholders to Organize Further Meetings in 2018 Just In Case



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- Clarifies Prior MLN
- Encourages Providers to IDENTIFY any MSA Situation
- Provider to Document Records and Take Payment Directly from Beneficiary
- Will MSA = Settlement and Create Confusion on Situations Medicare is Primary
 - No Further Treatment
 - No Settlement of Medicals
 - Settlement was Subject to Fixed Payment Option or Self-Calculate Option



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- A Reference Guide for Liability Medicare Set Asides
- Establish Criteria for Capitol Bridge LLC (WCRC) to Voluntarily Review LMSAs/NFMSAs
- Expect Workload Review Thresholds for both Medicare Beneficiary and Reasonable Expected Medicare Beneficiary
- Expect Certain Situations LMSA Not Applicable Such As:
 - No Further Treatment Letter
 - WC Case
 - Fixed Payment Option
- AWP Pricing for Drugs
- U&C Pricing for Items and Services
- Records and Documentation, Similar to Workers' Compensation



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- Roadblock Settlements, Destroying Importing Public Policy Promoting Such
- Rigid Application of what is a “hearing on the merits”
- Will Not Take into Account Policy Limit Settlements
- Will Not Take into Account “Bad Faith” State Laws
- Documentation is Non-Existent and Expensive to Create in Liability and No-Fault Cases, unlike Workers' Compensation
- No Direction on Claims with Multiple Defendants
- Will Be Silent on MASS TORT CLAIMS



Steps for Primary Plans

- Join MARC and Participate in Critical DC Meetings to Shape CMS Approach on LMSAs/NFMSAs
- Partner with Expert to Develop Internal Controls and Protocols
- Represented vs. Non-Represented
- High Exposure Cases
- Tighten Release Documentation Consistent with Present CMS Guidance
- Educate Examiners on Potential Exposures and Critical Nature of Accurate Section 111 MMSEA Data Entry (e.g., ICD Codes, TPOC Date, TPOC Amount, Plaintiff Attorney Info, etc.)
- Inform Your Congressional Representative of Your Concerns – USE MARC Platform to Do This! <http://www.marccoalition.com/take-action.html>



Questions

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