Workers' Comp

New York Workers' Compensation Board says NO to Medicare hold harmless language in Section 32 Waiver Agreements

March 6, 2020
2 MIN READ
Author profile image

Genex

Keep current with new legislation and its potential effect on your organization. This regulatory update is for informational purposes only, and provides some key highlights on state initiatives that may impact the Medicare Set-Aside services Genex provides.

On March 2, 2020, the New York State Workers' Compensation Board (Board) published Subject No. 046-372 which announced that the Board determined that it will no longer approve Section 32 waiver agreements that require a claimant to indemnify and/or hold the carrier harmless.

In 2009 the Board published Subject No. 046-372 which announced that they would not approve Section 32 waiver agreements that required the claimant to indemnify and hold the carrier harmless for any payment made by Medicare for treatment of claimant's work-related injuries (conditional payments) prior to the execution of the Section 32 Waiver Agreement. Since issuing Subject No. 046-372 on November 13, 2009, the Board received waiver agreements containing similar provisions whereby claimants agreed to indemnify and hold the carrier harmless. Many of these waiver agreements included language indicating that the claimant would indemnify and hold the carrier harmless if the carrier incurred liability as the result of the claimant's failure to safeguard the funds in a self-administered Medicare set-aside account established pursuant to the agreement.

The Board indicated that it believes these hold harmless provisions to be unfair, unconscionable and without place in an agreement settling a claim for workers' compensation benefits. The current publication of Subject No. 046-372 supersedes the previously issued Subject No. 046-372 dated November 13, 2009.

It will be interesting to see if other workers' compensation jurisdictions take note of New York's actions and implement similar settlement language restrictions. To view the Bulletin in its entirety please click here.

For more information/questions about this News Alert or to make a referral please contact **GENEX MSA** 1. 888.GO. GENEX or msadirect@genexservices.com.



©2022 Enlyte Group, LLC.

mitchell | genex | coventry