Workers' Comp

Medicare proposed rulemaking and enhancements to the MSP Recovery Portal

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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.

CMS has been extremely busy this December.

Earlier this month CMS issued a notice titled **Miscellaneous Medicare Secondary Payer Clarifications and Update** indicating that they will once again issue proposed rulemaking for future medical care expenses for settlements involving automobile and liability insurance including no fault insurance. The aim of the proposed rule is to ensure that beneficiaries are making the best health care choices possible by providing an opportunity to select an option for meeting future medical obligations that fit their individual circumstances while also protecting the Medicare Trust Fund.

CMS previously issued notices for proposed rulemaking only to later pull them back. In June 2016, CMS announced that they were considering an expansion of the MSA review process to include Liability and No Fault MSA's. Additionally, the bid proposal for the current WCRC contactor demonstrated the potential for CMS to begin reviewing Liability and No Fault MSA's as early as July 1, 2018. In the past few months, Medicare has issued similar proposed rulemaking for other Medicare programs with the goal of capturing or recouping funds to protect the Medicare Trust Fund. Notice of Proposed Rule Making for **Miscellaneous Medicare Secondary Payer Clarifications** is scheduled to be released in September 2019.

Last week we learned of CMS' proposed rulemaking and the **solicitation of public comment** regarding replacement of obsolete regulations related to civil money penalties imposed under the Strengthening Medicare and Repaying Taxpayers (SMART) Act. Under the SMART Act, a Responsible Reporting Entity can incur a civil money penalty for failing to report certain data to CMS on claims involving Medicare beneficiaries. Pursuant to the SMART Act, non-compliance with reporting requirements could be subject to a civil money

penalty of up to $1,000 for each day of noncompliance with respect to each Medicare beneficiary. To our knowledge, these articulated penalties were never imposed. CMS will be soliciting public comment on proposed criteria and practices for which civil money penalties would and would not be imposed under the Act. Notice of Proposed Rule Making for Civil Money Penalties and Medicare Secondary Reporting Requirements with public comment is scheduled to be released in September 2019

This past Tuesday CMS hosted a webinar to present an overview of the upcoming self-reporting functionality that will be added to the Medicare Secondary Payer Recover Portal (MSPRP) in January 2019. The enhancements will allow Medicare beneficiaries to self-report a case and the insurer or insurer representative to self-report when there is no Ongoing Responsibility for Medicals (ORM). CMS is also replacing their Multi-Factor Authentication (MFA) process. Current users will need to upgrade to the new MFA method after January 5, 2019. An overview of the MFA upgrade process was demonstrated during the webinar. CMS concluded the webinar promising additional enhancements to the MSPRP in Spring 2019 as well the potential for electronic payments.

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