Workers' Comp

Choosing the Right Medicare Set-Aside Approach

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When a workers' compensation claim is moving toward settlement, Medicare Set-Asides play an important role in addressing Medicare's interests. Most MSAs are prepared using the methodology the Centers for Medicare & Medicaid Services applies when reviewing a proposal, but not every claim requires the same approach. The medical history, treatment plan, claim status and supporting documentation all influence which type of MSA is appropriate.

A standard MSA typically considers medical records, pharmacy history, claim payment information, life expectancy and other documentation that may affect future medical treatment. This approach is designed to align with CMS review methodology and is commonly used when the parties intend to submit the allocation for review.

In other cases, a non-submit MSA, sometimes referred to as an evidence-based MSA, provides more flexibility when the parties do not intend to submit the allocation to CMS. The same core medical and claim information is still evaluated, but the analysis also considers additional evidence that more closely reflects expected future treatment.

For example, an injured employee is taking medication that is expected to be reduced or discontinued, or an independent medical examination provides further information about future care. A treating physician may clarify that a previously recommended procedure is no longer necessary. This additional insight allows for a more accurate and personalized allocation strategy tailored to the claim's anticipated medical needs.

There are also circumstances where future medical exposure may be limited by the facts of the claim. Certain state requirements may restrict how long a carrier remains responsible for future medical treatment, while a treating physician may indicate that additional care is not expected or that treatment will conclude within a defined period. In those situations, the available documentation can support an allocation that accounts for those limitations.

Older claims present another opportunity for closer review because treatment recommendations remain in the medical record long after they were originally made. A recommendation for surgery, durable medical equipment or another significant service may no longer reflect the current treatment plan. Confirming with the treating physician whether that recommendation still applies can provide a more accurate picture of future medical needs and help avoid allocating for care that is no longer expected.

Not every claim requires money to be set aside for future medical care. In certain denied or disputed claims, where no medical payments have been made, or cases where the medical record indicates no future care is expected, a zero MSA may be appropriate. A zero MSA documents why no future medical funds are being allocated and shows that Medicare's interests were considered as part of the settlement process. While CMS will no longer review Zero MSA submission they are still a valid MSA type. Documentation to support the Zero MSA allocation should always be maintained in the claim file.

Regardless of the approach, documentation remains a critical part of the process. Medical records, pharmacy information, claim payment histories, claim denials and other supporting materials can affect both the allocation itself and the CMS review process when submission is pursued. Missing or incomplete information can lead to additional questions, CMS requests for documentation and delays.

For that reason, MSA planning is most effective when it begins before mediation or settlement discussions are well underway. An early review can help identify missing information, clarify outstanding treatment recommendations and determine which MSA approach best reflects the circumstances of the claim. Ultimately, the allocation should be supported by the documentation, reflect anticipated future care and appropriately address Medicare's interests.

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