



# Medicare Set-Asides

Presented by

**Anna Loy Sayre**

MS, CRC, CDMS, CCM, CVE, CLCP, MSCC

---

"SHEDDING NEW LIGHT ON CARE MANAGEMENT"



# Medicare History

- **In 1966 Medicare was put into place by the Federal Government.**
- **In 1981 the MSP (Medicare Secondary Payer Act) was enacted including Workers' Compensation, Automobile, Liability, Self-Insured and No-Fault settlements involving future medical.**
- **In the late 1990s, the GAO completed a several year study demonstrating that Medicare was paying \$43B owed by Primary Payers.**
- **In 2001 Medicare recognized that the MSP was not being followed so they promulgated rules for the industry to follow.**



# Medicare Secondary Payer Statute (MSP)

- The objective is to protect the long term viability of the Medicare trust fund by ensuring that Medicare is **ALWAYS** secondary to any other insurance coverage.
- The Medicare Secondary Payer Act ensures that primary payers do **NOT** shift responsibility for payment of medical services to Medicare.



## Why Do We Care?

- **CMS can levy fines against carriers and other parties who fail to satisfy Medicare's interests by not addressing future medical on Medicare allowable expenses.**
- **A major carrier was fined \$4M on a single claim**
- **Avoid any future liability on settled claims for conditional payments and liens from MSPRC**



# Medicare Enforcement Provisions

- Medicare can recover from: Beneficiaries, Attorney's , Self- Insured Employers, TPA's or Insurers. (CRF Title 42 Part 411.26).
- If CMS has to take action to recover payment, they may recover twice the amount specified plus interest.



# Two Classes Of Qualified Individuals requiring MSA Submission

## Class I Individuals

- The individual is a **Medicare Beneficiary** and the total settlement exceeds **\$25,000**

## Class II Individuals

- The individual is not a Medicare beneficiary at the time of settlement but meets the two prong test:

1. Total amount of the settlement is over **\$250,000**

**AND**

2. There is a “**reasonable expectation**” of Medicare enrollment within 30 months of settlement date



## **Class II: “Reasonable Expectation”**

- **Eligibility for Medicare within 30 months: includes the 6 month application process & the 2 year waiting period**
- **Claimant is receiving SSD at the time of settlement**
- **Claimant applied for SSD; was initially declined, but anticipates appealing the decision**
- **Claimant is 62.5 years of age at time of settlement**
- **Claimant has end stage renal disease but does not currently qualify for Medicare**



## Settlements not involving a Qualified Individual (Class III?)

- Medicare states clearly that their interests must be satisfied in **ALL** settlements involving future medical costs
- Many insurers are developing a consistent policy to protect themselves from future litigation.
- Specific documentation should be contained in the file demonstrating consideration for Medicare's "interests".



**CMS**

- **Centers for Medicare and Medicaid Services**
- **Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, State Children's Health Insurance (SCHIP), HIPPA and CLIA.**

---

"SHEDDING NEW LIGHT ON CARE MANAGEMENT"



## COBC

- **The Coordination Of Benefits Contractor**
- **A Government Contractor hired by CMS to help process MSA's**
- **The Entity to which all claims are reported**
- **The Entity that receives all Submissions**
- **Determines if all required documents are included in the MSA**



# **Workers' Compensation** **Review Contractor**

- **Government contractor hired by CMS to review all MSA's**
- **Receives the MSA from the COBC**
- **Evaluates MSA for funding adequacy**
- **Advises CMS of Approval or Shortfall with recommendation for any increase**



## **MSPRC**

- Medicare Secondary Payer Recovery Center
- Located in Detroit
- Seeks reimbursement of liens and conditional payments nationwide
- Levies fines and interest for non-payment



## **MSA Arrangement**

- **An agreement made between the settling parties to protect Medicare's interests when settling future medical benefits for Medicare recipients or those who will receive Medicare and prevent the shift of burden from the primary payer to Medicare**



# **Recommended Specific Documentation**

- **Documentation of Medicare status**
- **Narrative review of medical records**
- **Past and Future treatment and projected costs**
- **Rated age**
- **Signed releases**
- **Conditional payment investigation**
- **Dollar amount to be set aside for future medical clearly stated in settlement documents**



## **What is included in an MSA Report?**

- **Cover letter**
- **A rated age (if appropriate)**
- **Signed releases**
- **Settlement or proposed settlement documents**
- **Narrative medical history**
- **Projected future medical costs**
- **Medical records**
- **Payment history**



## **New MSA Developments**

- **The Medicare Modernization Act (MMA) of 2003 will bring the new Prescription Drug Program into effect on 1/1/06 for all Medicare Beneficiaries. The Drug Program is called Medicare Part D. CMS was to develop a RX database effective in 2007.**
- **MSAs are now being done on Liability files that meet the following criteria:**
  - 1. Catastrophic claims with future medical costs, or**
  - 2. Significant dollar settlements (\$250,000), or**
  - 3. Claims with a Third Party Workers' Compensation Component, or**
  - 4. Medicare Beneficiary**



## **Public Law 110 - 173 Medicare Medicaid & SCHIP Section 111**

- Effective 7/1/2009
- Report all claims ( GL & WC) involving Medicare Beneficiaries with fines for non-compliance
- Guidelines to be issued by 7/1/2008
- No safe harbors



## **CMS Memo 5/20/2008**

- Effective 7/1/2008
- New life tables go into effect-No longer differentiate between gender for life expectancy for future medical costs



## MSA Process

1. Referral information includes last 2-3 years of medical records and last two years of payment history.
2. Copy of Medicare Card (if available)
3. Medical records reviewed & narrative provided with future cost projection.
4. MSA report returned to the claims for review and analysis. Revisions provided if needed.
5. When the file settles and the settlement documentation has been received, notify Spectrum for CMS submission.
6. Final approval from CMS now takes from 60-90 days



## **Litigation**

- **There have been several class action suits filed to date regarding Medicare's Interests. So far all have been dismissed. The issues include:**
  - 1. Language explaining the Custodial Agreement included in the Settlement Document**
  - 2. Failure to submit an MSA**
  - 3. MSPRC Recovery of conditional payments**



## Recommendations

- **Prepare for reporting all pertinent claims as required on 7/1/2009**
- **Develop a consistent internal policy statement for Class III future medical settlements**
- **Use consistent language in the MSA Custodial Agreement to define responsibilities**
- **Utilize certified industry expert for consultation and MSA submission**



# Questions

---

"SHEDDING NEW LIGHT ON CARE MANAGEMENT"



# Thanks

**Anna Loy Sayre**, CRC, CDMS, CCM, CVE, CLCP, MSCC

**Spectrum MSA**

**P.O. Box 622220**

**Oviedo, FL 32762**

**PH: 407-249-2957**

**Cell: 407-492-5024**

**FX: 407-249-8174**

---

"SHEDDING NEW LIGHT ON CARE MANAGEMENT"