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FASTEN YOUR SEATBELTS:



An Unavoidable Collision Between Liability Settlements and the Medicare, Medicaid and SCHIP Extension Act of 2007

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Brief History of Medicare Legislation

Title XVIII of the Social Security Act

Purpose: To provide governmental health insurance for three groups of people

1. Individuals who qualify for SS disability insurance
2. Individuals eligible for SS retirement or railroad retirement benefits
3. Individuals who have end stage renal disease



Medicare Secondary Payor Act (1980s)

- Medicare is prohibited from making payment when there is a primary payor involved (however, conditional payments can be made)
- EX: group health, workers' compensation

Patel Memo

(July 23, 2001)

- Reinforces previous legislation that Medicare's interests should be considered when settling workers' compensation claims



Medicare Modernization Act of 2003

- Adds “Part D” benefits
- Private Part D plans
- Subsequent Memorandum regarding the inclusion of Part D benefits in Medicare Set Asides



The Medicare, Medicaid and SCHIP Act of 2007

- Increase in physician payment update
- Incentive payment program for physician scarcity areas
- Extends therapy caps
- Extends authority of specialized Medicare advantage plans for special needs
- **Secondary Payor Reporting Requirements**



Section 111

The purpose of Section 111 is to establish reporting requirements to enable Medicare to examine settlements, judgments and awards to ensure conditional payments are identified and reimbursed and to also determine if an allocation for future medical treatment is provided.



To Whom Does this Legislation Apply?

- Group Health Plans (GHPs)
- Non-Group Health Plans (non-GHPs)
 - Providers of liability insurance (including self-insurance)
 - No fault insurance
 - Workers' compensation insurance



Requirements

- **STEP 1:** Determination of a claimant's entitlement to Medicare benefits
- **STEP 2:** Submit Information to the Secretary of Health and Human Services in a form and manner (including frequency) to be determined by the Secretary



Recent Steps by CMS to Implement Reporting Process

- August 2008: CMS announced its initial *Implementation Guidelines* in the Federal Register
- September 5, 2008: CMS released an *Implementation Timeline*
- September 24, 2008: CMS releases *Registration Process* instructions



Penalties for Non-Compliance

- \$1,000.00 per day
- 2x damages per Medicare Secondary Payor Act



WHY?

The Congressional Budget Office has estimated that the government will save up to 1.1 billion dollars in the first eight years of implementation



Issues for Clarification

- Medicare eligibility
- Triggering event
- Thresholds
- Accessibility
- Multiple Defendants
- Redundancy

MMSEA Does **NOT** Require
Set-Asides in
Liability Settlements



MSAs in WC Settlements

- Summary of Medicare Set Asides in workers' compensation claims
- Differences between workers' compensation settlements and liability settlements
 - caps in liability premiums
 - no fault standard in wc statutes
 - types of damages



Conclusion

- Changing Concerns for Defendants
- Consent to Release Information
- Data Collection and Storage