THE 411 ON MEDICARE SET-ASIDES AND HOW PROFESSIONAL ADMINISTRATION CAN HELP

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The complexities surrounding compliance for Medicare Set-Asides (MSAs) can be confusing for even the most experienced claims professionals, let alone an injured worker. And the consequences of failing to develop and manage MSAs properly can be dire – for both the injured worker and the payer.

The last two decades have seen an entire industry evolve to address the issue. Stakeholders now spend months – even years – studying the Medicare Secondary Payer Act to become specialists. But still, many industry professionals – and injured workers – don't see the critical importance of understanding and strictly adhering to Medicare's requirements.

MSAS: WHAT THEY ARE AND WHY THEY EXIST

When an injured worker settles their workers' compensation claim, a sum of money is typically given to pay the costs of future medical treatments needed for the occupational injury. The issue gets tricky when the injured worker is – or soon will be – covered by Medicare.

Medicare typically pays its beneficiaries' medical costs – UNLESS payment is deemed the responsibility of another entity. The Medicare Secondary Payer Act, passed in 1980, requires that Medicare be the secondary payer to certain primary plans – such as workers' compensation.

Just as the general healthcare system does not pay for workplace injury treatment, neither does Medicare. The workers' compensation system is designed to have the 'payer' – employer and/or insurer – provide treatment coverage; in return, the injured worker may not sue the payer.

To ensure the financial burden does not erroneously fall to Medicare, the government has made it clear that Medicare's 'future interests' must be considered when settling a claim. In other words, an estimated sum of money for the injured worker's medical treatment related to the occupational injury should be determined. Getting the best 'estimate' of the medical costs needed for the person's lifetime is one of the trickiest parts of the equation.

Trained experts can make a reasonable estimate based on medical opinions and previous medical care related to the injury. One way to determine that is through a Medicare Set Aside report. This is an allocation report that shows an estimate of the various treatments related to the injury that would be covered by Medicare, such as:

- Prescriptions
- Doctor appointments
- Surgeries
- Injections
- Intermittent home healthcare, if that is or expected to become necessary

The report includes an estimated amount of money needed to treat the injury throughout the person's lifetime. The injured worker's settlement may include the MSA lump sum as part of the agreement. That money is set aside specifically to pay for medical treatments for the occupational injury that Medicare would otherwise cover.

The government does not require MSAs. However, many experts advise these as a way to demonstrate that Medicare's future interests have been taken into account, as they demonstrate funding is available to treat the injury.

The Centers for Medicare and Medicaid Services, which oversees Medicare, will evaluate and approve or deny some MSAs, depending on the settlement amount. This is yet another way injured workers can avoid getting in the

crosshairs of the federal agency.

If the MSA funds dry up, but the injured worker still requires medical treatment for the injury, Medicare will then step in and pay – as long as all of the rules have been followed. Otherwise, Medicare may deny reimbursement of a medical bill related to the injury. In fact, that has been increasingly occurring of late and demonstrated in a recent study published by Ametros. The requirements surrounding MSAs are vast and intricate. But it is imperative to fulfill them. Failing to do so can result in the injured worker having no financial coverage to treat their injury in the future, leading to potential treatment delays and financial hardships. The person may turn to the payer for reimbursement.

THE RULES

Once the amount of the MSA has been determined and the settlement approved, the rules of administering the account kick in. Administering the MSA is just as important as protecting Medicare's interests. Among the rules are:

- The MSA funds must be held in an interest-bearing account.
- The funds may be used only for treatment related to the injury.
- The funds may be used only for Medicare-covered expenses – even if it is related to the occupational injury.
- Payment must be made according to the appropriate fee schedule.
- Annual accounting must be reported to Medicare within a specific timeframe.
- There must be a line-item detail for the duration of eligibility.

The specifics of these requirements can be mind-boggling. For example, the annual reporting to Medicare must include accurate tracking of how and when each MSA expenditure has been made each year. Copies of bills and receipts must be kept. Detailed information on the expenditures must be sent to CMS in the form of an annual attestation, which must be sent to CMS each year within 30 days of the anniversary of the settlement.

Additionally, the injured worker must report in any given year if the MSA funds have been depleted. Appropriately done, Medicare will then step in and pay the remaining costs to treat the occupational injury for the remainder of that year or longer. However, the injured worker must first file a temporary depletion order or permanent exhaustion letter to show that the MSA funds have been spent correctly and have been exhausted.

The amount of each payment from the MSA can be confusing. Only the state fee schedule or the 'usual and customary' price for treatments and medications must be calculated and requested from providers. If the injured worker pays more than the fee schedule, he may have to repay Medicare for the excess cost expensed from the MSA.

PROFESSIONAL ADMINISTRATORS

The intricacies and nuances involved in creating and administering an MSA is best left to the experts rather than the injured worker running the risk of mismanaging the account. In fact, CMS updated its Workers' Compensation Medicare Set Aside Reference Guide in 2017 to emphasize this: "Although beneficiaries may act as their own administrators, it is highly recommended that settlement recipients consider the use of a professional administrator for their funds."

Despite these words of wisdom, the vast majority of settled claims are self-administered. Many of them find out the difficulties involved and ultimately use the services of a professional administrator. If the injured worker fails to accurately manage their MSA and Medicare denies care, the person must replenish the MSA account so it can correct its reporting to Medicare. Often, this is the time a professional administrator is called in.

Experienced, trusted professional administrators are experts at tracking and reporting MSA expenditures. They have sophisticated systems established to ensure compliance. They also have an extensive understanding of calculating the workers' compensation fee schedule for each state, negotiating bills, and coordinating care for injured workers. Additionally, many professional administrators help injured workers stretch their MSA funds by offering discounts for treatments and medications.

One of the challenges for injured workers managing their own MSAs is knowing which treatments, procedures, and medications are covered by Medicare and which are not. In addition to an in-depth understanding of what is covered and what is not, best-in-class professional administrators provide ways to help the injured worker pay for treatment that is not covered by Medicare.

"The world of Medicare compliance in workers' compensation cases where resolving future medicals has long been confusing and complicated for practitioners, businesses, carriers and TPAs alike," says Thomas S. Thornton, III, shareholder with Carr Allison, PC. "Where we are attempting to establish and fund an MSA, especially with a pro se claimant who may not be able to navigate the administrative requirements requested by Medicare, I welcome the opportunity to protect them with professional administration after settlement. Professional administration removes any concerns and provides my clients and me with confidence that the funds will be exhausted appropriately, protecting all parties to the settlement, especially the unrepresented claimants, diminishing the risk of potential future litigation over the process."

A Medical Cost Projection (MCP) is a tool some professional administrators use. It typically consists of funds allocated for any and all future medical expenses, whether related to the occupational injury or not, or covered by Medicare or not. An administrator can manage MCP accounts for a variety of medical treatments. Often, an MSA will be established along with an MCP that is designed to pay for healthcare items not covered by the MSA.

Some injured workers do not want to carry the burden of managing their MSA account but still want some control. Professional administrators offer options for them as well. One service, for example, helps the injured worker maximize their medical funds but links to the injured worker's own personal bank account, helping facilitate all care-related payments. The injured worker receives a specialized card to show at their doctor's office or pharmacy. It gives the injured worker some control over their settlement funds, while still enjoying the expert assistance from the professional administrator.

CONCLUSION

MSAs can be a great tool to ensure an injured worker has money to pay for medical treatment related to an occupational injury without risking backlash from Medicare. But the many moving parts and minutiae involved can be overwhelming. Even the most detailed person can easily miss a small element that can be devastating.
Professional administrators with the experience and expertise to develop and manage MSAs are invaluable. Utilizing their services is in the best interests of all stakeholders involved in a settlement – especially the injured worker.

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