The Medicare "Tsunami" Driving Medical Claim Reserves

2010 Casualty Loss Reserve Seminar
September 21, 2010

Greg Sisson, AVP of Claims
Underwriters Safety & Claims
Louisville, Kentucky

The Medicare "Tsunami"

- Bigger than Medicare Set Asides
- Stronger than the Medicare Secondary Payer Act
- Faster than the *actual* end of the recession
- ***A Tsunami you can plan for…***

Outline

- Medicare Eligibility
- MSA vs. MMSEA
- Difficulties Settling Claims
- What is MMSEA?
- Why the Need for MMSEA?
- History / Effects / Workflows
- The Future

Who is Eligible for Medicare?

- Not just age 65 and older…
- Under age 65 with certain disabilities on SSDI, and their dependant residents
- All with end-stage kidney / renal failure
- Additional citizens under the Health Care Reform Act

What's the Difference – MSA vs. MMSEA ?

- **MSAs** – Medicare Set-Aside Allocations estimate the future medical expenses of Workers' Compensation claims, when settlements of medical benefits with Medicare beneficiaries are being evaluated. MSAs were first required in 2001 and must be approved by CMS.
- **MMSEA** – is a REPORTING program. MMSEA requires electronic reporting of claim data to Medicare starting Jan 1, 2011.

MSAs Make It Difficult to Settle

- MSAs make it difficult to buy-out the future medical benefits of Medicare beneficiaries on WC claims.
- MSAs are expensive @ $2,500 each.
- Claimants must agree to take over payments (or pay a 3p) to pay their medical bills, using an interest-bearing account, and to complete reporting of their payments before Medicare will make any payments for claim-related conditions
- CMS has rejected a substantial number of MSA proposals lately, estimating on the "high side" of the lifetime medical need, apparently to assure that they rarely become liable for claim-related expenses throughout the claimant's life.
- Finally, such medical buy-outs must be approved by CMS and the appropriate state Dept of Workers' Claims, which requires extensive preparation, time and handling.
- Result: Fewer WC medical claims are being bought-out

What is "MMSEA" ?

- **Medicare Medicaid SCHIP Extension Act** signed into law by President George W. Bush
- Section 111 of this federal act makes claim payers, called Responsible Reporting Entities ("RRE"), responsible for **reporting** claim data to the Center for Medicare & Medicaid Services ("CMS") - self insureds & insurance carriers
- Group Health Plans (GHPs) started reporting Jan 1, 2010
- Non-GHPs with claims involving medical exposures are responsible for reporting claim data to CMS starting Jan 1, 2011 (WC, auto PIP, med pay, bodily injury, malpractice claims…)

Why MMSEA?

- Medicare cannot afford to issue medical payments that primary plans are responsible for
- People are living longer
- More Medicare beneficiaries – Health Care Reform
- Tight economy
- Technology is now sufficient for claim reporting
- Traditional efforts to locate primary claims, protect the subrogation interests of Medicare, and secure recovery from primary claims are not enough

History Leading To MMSEA

- 1980 ~ Medicare became a secondary payer to most group medical plans and all WC, PIP, MP and bodily injury plans – through the Medicare Secondary Payer Act
- But, little changed and Medicare continued paying medical expenses that it wasn't responsible for

History Leading To MMSEA

- Problem ~ Medicare didn't realize that primary payer claims existed and rarely recovered their payments. So, taxpayers funded claims that Medicare wasn't responsible for…
- 2001 ~ Primary payers, through MSAs, began placing Medicare on notice of WC medical buyouts involving beneficiaries. This stopped some of the bleeding (WC claims only), but additional actions were needed

History Leading To MMSEA

- 2007 ~ thru MMSEA, RREs became responsible for determining Medicare eligibility of claimants and reporting claims involving beneficiaries to CMS starting Jan 1, 2011
- This widens the scope of reporting ~ from WC buyouts only, to reporting virtually all claims involving medical payments

Warning: PRIOR TO MMSEA implementation, Medicare's interests must be protected with reimbursements to Medicare for conditional payments issued – per the Medicare Secondary Payer Act of 1980

Effects of MMSEA

- NOW - Professional liability policies & limits should be checked for MMSEA reporting coverage of RREs, TPAs and reporting agents – E&O exposure
- 1Q 2011 - upon receiving new claim reports, CMS will:
  - search their system for payments previously issued
  - prevent future payments that RREs should make
  - enforce reporting with fines @ $1,000 / day per claim against RREs, claimants and claimant attorneys
- 2Q 2011 - CMS will start issuing notices to recover Medicare payments due to claim-related treatment. This will include claims that were open 1/1/2010 and afterwards, even if they are closed now. The leans may include payments made years ago. There will be a Tsunami of liens at first, but this is expected to streamline as Medicare catches up.

12

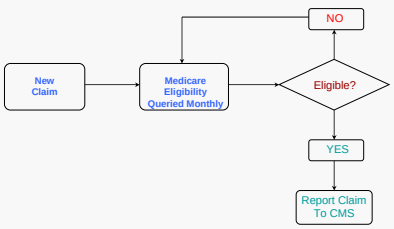
MMSEA Workflow - WC, PIP & Med Pay

- Eligibility queries - the Medicare database will be checked regularly for eligibility. Queries end when claims are closed or eligibility is confirmed. Eligible claims are reported to Medicare the following quarter
- Workers Compensation claims open 1/1/2010 and after with compensable lost time or medical payments exceeding $750 must be reported if eligibility is confirmed. A final report must also be filed if responsibility for medical benefits ends (death, jurisdictional limit, coverage ends)
- Personal Injury Protection & Medical Payments claims must also be queried. All such claims involving beneficiaries open 1/1/2010 and after must be reported to Medicare. Final reports are also required when benefits end (limits exhausted)

13

MMSEA Workflow - WC, PIP & Med Pay

Claims with Ongoing Responsibility for Medical

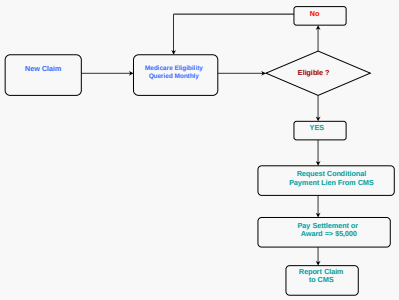


14

MMSEA Workflow – Bodily Injury Claims

- Bodily Injury resulting in payments to Medicare claimants of $5,000 or more beginning 10/1/2010 must also be reported
- Differences between WC/PIP/MP and BI:
  - Letters requesting BI claimant names, SS #, DOB, gender must be sent if data is unknown
  - "Conditional Payments" must be requested from Medicare early in the lives of BI claims (as they should be reimbursed at the time settlement payments are issued)
  - BI claims involving Medicare claimants are reported AFTER settlement payments are issued

MMSEA Workflow – Bodily Injury Claims



The Future of MMSEA

- MMSEA will drive medical reserve development when claimants become beneficiaries due to aging and worsening of medical conditions. Medicare will now know that primary payer claims exist – eliminating cost shifting to Medicare

The Future of MMSEA

- Medicaid – the second "M" in MMSEA, will surely get involved in the future. State-based Medicaid, for the impoverished, is in poor financial shape as well
- Medicaid will likely provide an eligibility database to query
- Expect Medicaid to require reporting of claims involving Medicaid beneficiaries in the future, for the same reasons that Medicare required claim reporting…

The Future of MMSEA

- SCHIP – the "S" in MMSEA, will also get involved. State Children's Health Insurance Programs are also in need of funding
- Child Support Lien Network already requires reporting of claims in a growing number of states, attaching child support liens to indemnity benefit payments
- This will further increase the medical reimbursements by primary payer claims and drive claim incurreds

Greg Sisson
502-489-6289
GregS@USCKY.com

Is your organization ready for the Tsunami?