



2018 Annual Meeting & Educational Conference

To Submit, or Not To Submit.....

Presented By:
Greg Gitter
President
Legacy Claim Solutions

OBJECTIVES

- Historical approach to MSAs and submissions
- Advantages and Disadvantages of submitting
- Overall effects on settlements
- Nuances of Non-Submission approach
- Dispel Myths of Non-Submitted MSAs

HISTORICAL CONTEXT

- MSAs created by way of the Patel Memo in 2001
- Explains what an MSA is, and why they should be used
- References MSP Statute and related regulations
 - Medicare should not make payments when a primary plan is responsible for medical expenses

HISTORICAL CONTEXT

- Legal verbiage surrounding the submission of MSAs is non-existent
- Vendors had a field day in early days of MSAs
 - Fear factor
 - Double damages
 - Lawsuits

HISTORICAL CONTEXT

- Goals of submitted MSAs:
 - Avoid a burden shift to Medicare
 - Provide funds to an injured worker to cover future Medicare-allowable, injury-related expenses

SUBMITTED MSA: ADVANTAGES

- Advantages
 - Perceived safety net
 - Blessing from CMS
 - Golden ticket to Medicare post-settlement
- Submission is a Voluntary Process

SUBMITTED MSA: DISADVANTAGES

- Disadvantages
 - Higher cost of medical care
 - AWP, CMS standards rather than medical standards, treatment frequency, etc.
 - “Mirroring” of historic treatment versus reality
 - Can be “settlement prohibitive”
 - Can result in costly settlement delays waiting for CMS

SUBMITTED MSA: EFFECTS ON SETTLEMENTS

- MSA approval process can confuse injured workers
 - Delay in waiting for approval can lead to “buyer’s remorse”
 - Difficult to explain CMS treatment standards vs. historical treatment
 - CMS-specific releases add another step to the process
- “Counter-higher” can lead to more costly settlement

NON-SUBMITTED MSAS

- Created out of frustration with the submission process
 - Counter-higher responses
 - Development letters
- **Not intended to circumvent the MSP Statute**

NON-SUBMITTED MSAS

- Same ultimate goal; protect the Medicare trust fund
- MSP compliance industry created this approach
- Programmatic approach, not case-by-case

NON-SUBMITTED MSAS: SIMILARITIES

- Preparation is similar to traditional MSA
- Review of medical records, Payment and Rx histories
- Rated ages
- Lifetime future medical projections using State Fee Schedules
 - U&C used if no Fee Schedule in place

NON-SUBMITTED MSAS: SIMILARITIES

- Same thresholds used as a traditional MSA:
 - Medicare beneficiary and settlement is \$25K or greater
 - Within 30 months of being a Medicare beneficiary, and settlement is \$250K or greater

NON-SUBMITTED MSAS: DIFFERENCES

- Evidence Based Medicine guidelines
- PBM pricing used for medications vs. CMS-mandated AWP
- Consideration of Professional Administration in conjunction with a non-submitted MSA

SUBMITTED AND NON-SUBMITTED MSA

- Goals:
 - Avoid a burden shift to Medicare
 - Provide funds to an injured worker to cover future Medicare-allowable, injury-related expenses
- GOALS ARE IDENTICAL FOR BOTH!**

MYTHS

- **MYTH:** CMS could come back to for reimbursement
 - If the MSA is administered properly for Medicare covered, injury related treatment the documentation would substantiate appropriate exhaustion

MYTHS

- **MYTH:** The MSA will exhaust faster because the difference in pricing
 - Quite the contrary that through the use of various tools (Professional Admin, PPO's, PBM's, etc.) the funds should be extended, thus protecting the Medicare Trust and extending the life of the benefits in the MSA.
 - It is common that the nature, extent and amount of treatment post-settlement diminishes

MYTHS

- **MYTH:** Non-submission creates additional exposure to the parties
 - Where would the additional exposure be created? According to what information/premise?
 - The potential exposure is the same. If Medicare's interests are **properly considered** as part of the MSA **and** the MSA is administered correctly, there is no difference.

QUESTIONS?

Thank you for your time!!

Greg Gitter

President

Legacy Claim Solutions

www.legacyclaims.com

ggitter@legacyclaims.com