

Medicare Set-Aside Update

On February 11, 2014, The Centers for Medicare and Medicaid Services (“CMS”) announced that it is seeking comments on a proposed expansion of the Workers’ Compensation Medicare Set Aside Arrangement (“WCMSA”) re-review process. CMS is inviting comments with regard to all aspects of the proposal, including the time frame, threshold and reasons for granting a re-review.

Comments regarding the proposed revisions to the re-review process can be sent to WCMSARereview@CMS.hhs.gov by March 31, 2014.

The proposed timeline for a determination on the re-review is 30 business days. There is also a provision in the proposed expansion that would preclude the same specialist involved in the original determination from performing the re-review in an effort to avoid the appearance that the prior reviews were simply being rubber stamped.

The proposed changes would allow re-review at any time for mathematical errors identified in the approved set aside amount, or if the original submission included case records for another beneficiary.

The proposed expansion would also allow re-review requests when the original set aside was approved within the last 180 days; the case has not settled; no prior re-review request has been submitted; and the re-review requests a change to the approved amount of 10 percent or \$10,000, whichever is more, in the following circumstances:

1. Submitter disagrees with how the medical records were interpreted;
2. Medical records dated prior to the submission date were mistakenly omitted;
3. Items or services priced in the approved set aside amount are no longer needed or there is a change in the beneficiary's treatment plan;
4. A recommended drug should not be used because it is harmful to the beneficiary;
5. Dispute of items priced for an unrelated body part;
6. Dispute of the rated age used to calculate life expectancy.

There are also certain situations in which the Review Center would elevate the re-review to the CMS regional office, such as:

1. Failure to adhere to court findings;
2. CMS policy disputes;
3. Carrier maintains ongoing responsibility for medicals for treatment that has been identified in the approved WCMSA.

We believe that this proposed expansion is moving in the right direction with regard to Medicare re-review of set asides.