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MEDICARE STIPULATIONS IN CONNECTICUT
WORKERS' COMPENSATION CLAIMS

I. BRIEF REVIEW OF FEDERAL MEDICARE ISSUES

- A. The Centers for Medicare and Medicaid Services (CMS) has stated that submission of a Medicare set-aside (MSA) agreement to CMS is a voluntary process.
- B. In fact, CMS will not review for approval MSAs unless the claim falls in certain categories.
- C. CMS will review an MSA when:
 - 1) Claimant is a Medicare beneficiary and total settlement is greater than \$25,000.
 - 2) Claimant has "reasonable expectation" of becoming a Medicare beneficiary within 30 months and total settlement is greater than \$250,000.
- D. If the case is not submitted to CMS the employer in a workers' compensation claim must still consider Medicare's interests.

II. STATE OF CONNECTICUT REQUIREMENTS REGARDING SETTLEMENTS INVOLVING MEDICARE PER MEMORANDUM 2019-13

- A. This is not a statute or regulation, however, the State of Connecticut Workers' Compensation Commission will require this to be followed in order to get settlements approved.
- B. Required provisions in Connecticut where MSA is established in a settlement:

- 1) Must include a statement whether the claimant has applied for or is appealing for SSDI **OR** is on Medicare **OR** has “reasonable expectation” to be Medicare beneficiary within 30 months.
- 2) Must include provision that CMS’ interest regarding future Medicare payments have been reasonably considered.
- 3) Must include provision as to responsible party for conditional payments and that both parties must cooperate in obtaining conditional payment information.
- 4) Any hold harmless language regarding conditional payments must be in “bold typeface.” Generally such language is disfavored. In no circumstance may an attorney be required to hold harmless another party.
- 5) Must include a provision which confirms that the claimant understands that before the cost of such medical service or prescription is submitted for payment to Medicare or a Medicare-equivalent plan, the claimant (or his or her designated third-party administrator, if applicable) is responsible for payment up to the amount of the Medicare set-aside for future medical services and prescription costs for claimed or accepted conditions enumerated in the stipulation, where such services would be covered and are otherwise reimbursable by Medicare or a Medicare-equivalent plan.
- 6) Where there are “periodic” payments there must be a provision that the respondents “will remain liable for the payment of such periodic payments.
- 7) If the MSA is to be administered by a third party, the stipulation must say that both parties had a say in the choice of the administrator.

C. Permissible provision in Connecticut stipulations with MSAs:

- 1) That the stipulation does not attempt to shift responsibility from the respondents to CMS.
- 2) A provision that the allocation for future medical expenses as agreed by the parties is found to be reasonable. A sentence that states that the commissioner finds the allocation reasonable will be allowed only at the discretion of the commissioner and if there is an analysis of the allocation.

D. Coordination with SSDI:

- 1) Where the claimant is on or likely to be on SSDI then there should be a provision allocating the payments for indemnity purposes (see General Statutes Section 31-302).

E. Connecticut Workers’ Compensation Commission guidelines for stipulation where MSA is not required:

- 1) Where the claimant is not Medicare eligible but may be on Medicare “in the foreseeable future” there should be an allocation in the stipulation for future medical even if there is no formal MSA.
- 2) A commissioner may refuse to approve a stipulation which in the opinions of the commission unnecessarily requires an MSA.
- 3) Where an MSA or allocation for future medical is not approved by CMS the parties should be prepared to explain the basis for the allocation.
- 4) If additional body parts or injuries are to be settled that are not part of the MSA, consideration should be given to settlement of those claims in a separate stipulation.
- 5) The above is subject to the discretion of the commissioner.