Beyond SMART and the Upcoming Penalties

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Center for Medicare and Medicaid Services

- Agency under the Department of Health & Human Services
- Operates through a disparate group of contractors
- For profit companies who are awarded the contracts
- Managed by CMS

Benefits Coordination and Recovery Center (BCRC)

- Merger of MSPRC and COB
- Responsible for recovering conditional payments
- Final demand for payment letter issued once the settlement or judgment is funded
- Identifies beneficiaries

Workers' Compensation Review Center (WCRC)

- Review and approve WCMSAs
- No appeal from determination
- Will allow a second review if errors are made or additional medical information provided

Medicare Secondary Payer Recovery Audit Contractor (MSPRAC)

- **Audit MMSEA, Section 111 reporting**
- **Audit MSAs**
- **Office of Inspector General (OIG) issued notice of proposed rules to enforce civil penalties**
- **MSPRAC assess penalties and OIG will enforce collection**

Advanced Notice of Proposed Rulemaking (ANPRN)

- Method to implement the SMART Act
- Four new proposed regulations regarding MSP compliance
- CMS sends them to OMB for "acceptance"
- Once accepted, a 60 day public comment period begins before implementation

Proposed New Regulations

- **LMSA criteria and safe harbors for good faith efforts in reporting**
- **Penalty criteria**
- **Appeal procedure for conditional payment disputes**

New MSPRAC

- Contract awarded in 6/12
- Began auditing GH entities in 3/13
- Authority to assess and collect penalties for reporting errors and MSAs
- 1/3 recovery
- Penalty phase will begin once the regulations become effective

New Contractor

- **Effective 2/1/14**
- **MSPRC and COBC combine to form new contractor**
- **Benefits Coordination and Recovery Center (BCRC)**

The Mandatory Insurance Reporting Audit (1,705)

The Mandatory Insurance Reporting Audit identified 76 potential issues. A detailed list of these findings as well as claim numbers that need resolution can be found in Section 4 of this document. Below is a breakdown of the issues:

- **45 claims do not have a 'Y' in Medicare flag and are over 65 years old.**
- **Very low % of Medicare Beneficiaries (2.64%)**
- **14 claims are missing Key Big 5 Data (DOB/SSN)**
- **17 claims have ORM with a Medicare Beneficiary and have not been reported to CMS.**

The Conditional Payment Management Audit

8 Claims were eligible for a brief Conditional Payment Audit.

Below is a summary of the findings:

- **5 Closed (properly closed with the MSPRC showing a case closure letter on file)**
- **3 Open MSPRC Common Working Files**
  - **2 Open files with the BCRC that require proper authorization and securing of a Final Demand.**
  - **1 Open file has a Final Demand issued. This file requires obtaining proper authorizations and ensuring that the Final Demand letter was received.**

Medicare IVIG Access & Strengthening Medicare & Repaying Taxpayer Act of 2012

- **Became a law on 1/10/13.**
- **Access to Intravenous Immune Globulin.**
- **Contains 5 Sections that deal with Medicare Compliance**

Section 201: Conditional Payment Information

- Effective 9 months after passed into law.
- This is the deadline for CMS to adopt final regulations to implement.
- Allows parties to obtain CPC information before settlement in a timely manner.
- Applies to WC and GL claims.

Demand Letter

- Parties may request a demand letter from Medicare that is good for a period of time before settlement.
- Requires CMS to be provided notice within 120 days of an expected or reasonably expected date of settlement.
- CMS has 65 days to provide demand letter but can extend it another 30 days.
- After appropriate period has elapsed, parties can retrieve CPC info from website and rely on it.
- Settlement must occur within 120 days of notice and 3 days from download from website.

Jurisdiction

- If elected, the Secretary's determination is final.
- If procedure not followed, default to previous method.
- Right of appeal provided to primary payer but not Medicare. Beneficiary must be given notice.
- Federal jurisdiction created.
- No impact on MSA's

Section 202: Reporting Thresholds

- Effective 1/1/14
- Applies only to liability claims (expected recovery is less than cost to recover).
- Excludes ingestion, implantation, and exposure cases.
- Annual threshold calculated by Secretary of HHS published by 11/15.
- No obligation to repay Medicare or report if claim falls below annual threshold.
- CMS is to report to Congress on thresholds for WC and No Fault.

Section 203: Reporting Under Section 111

- **Effective 1/10/13.**
- **Amended to provide "up to" $1,000 per day per claim, giving Medicare discretion.**
- **Requires Medicare to solicit proposals for safe harbor situations within 60 days.**
- **Requires Medicare to propose final safe harbors for good faith efforts when beneficiary cannot be determined.**
- **No deadline for final safe harbor proposals.**

Section 204: Use of SSN in Reporting

- **Effective 18 months after enactment.**
- **Secretary can request a one year extension on application to Congress.**
- **Allows RRE's to report without using the SSN or HCIN.**
- **Mitigates against potential state law privacy claims.**

Section 205: Statute of Limitation

- **Effective 6 months after enactment**
- **Creates a 3 year statute of limitations on CPC and Section 111 reporting from settlement, judgment, award or other payment.**
- **To trigger the protection, the claim must be electronically reported.**

Questions or comments?

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