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Strategic Utilization of Data and Other Innovative Strategies for Cost Mitigation in the Medicare Allocation

Overview

There are several newly emerging approaches to cost reduction related to Medicare allocations. While traditional Medicare Set Asides and methodologies continue to play a significant role in any comprehensive Medicare compliance program, there are new approaches available to significantly lower costs associated with these allocations. By utilizing the ever-increasing amount of available data related to the claim, it is possible to accurately identify multiple opportunities for increased efficiency and savings. There are a number of best practices for identifying drivers in soaring pharmaceutical costs, particularly those related to long-term opioid use. There are a number of ways to manage these costs including; dosage reduction, physician engagement and the use of triggers for identifying areas of concern in the allocation. Further, there are benefits and concerns related to the new "Non-Submit" approach to allocations. These statutorily permitted allocations take advantage of universally accepted clinical and legal guidelines to project future expenses related to medical care. And while this "Non-Submit" approach mitigates many of the complications associated with traditional workers' compensation CMS submission scenarios, the full implications of this method continue to evolve.

The Challenges of Traditional Medicare Allocations

The Medicare Secondary Payer (MSP) law has evolved over the past three decades for the strict purpose of protecting the Medicare Trust Fund. Charged with its administration, the Centers for Medicare & Medicaid Services (CMS) continues to work at regulations, policies and programs that improve its systems and processes. Information about conditional payment resolutions, Workers' Compensation Medicare Set Asides and Mandatory Insurer Reporting data are now being merged together to improve coordination of benefits. Insurers and entities who self-insure for liability, workers' compensation and no-fault

claims struggle to comply because, traditionally, their MSP compliance programs operate in independent silos and are obsolete in today's data rich environment. The lack of visibility across the enterprise cannot compete with how CMS assembles the data.

These challenges, combined with the explosion of pharmaceutical costs, have created an environment that demands new approaches to efficiency and savings. And while the approved Workers' Compensation Medicare Set-Aside (WCMSA) allocation is still the safest method to end exposure to Medicare for future medicals when settling a claim, there are practical new approaches that should be considered. This includes, but is not limited to, the "Non-Submit" alternative.

Medicare Data Reporting

Section 111 of the Medicare & Medicaid SCHIP Extension Act of 2007 (MMSEA) requires the Centers for Medicare & Medicaid Services (CMS) to secure data reporting from certain insurance companies, including self-insurance. CMS has worked for many years to determine who is responsible to send the required data and what information is to be reported. CMS requires Responsible Reporting Entities (RREs) to send data about settlements, judgments, awards and medical payment responsibility for Medicare beneficiaries that have presented workers' compensation, liability or no-fault claims.

The dramatic increase in the amount of data exchanged with Medicare also creates opportunities for saving. Through careful examination of the data, and strict adherence to proven best practices, claims can be closed more efficiently than ever before.

One of the most notable enhancements available in the Medicare Secondary Payer space today is software technology that aligns reporting data with Medicare recovery efforts. Using data analytics and customized business intelligence, the software can identify claims with exposure to Medicare recovery proactively without the need for adjuster identification of the Medicare exposure. By getting in front of the Medicare recovery, insurers and self-insurers are reducing their Medicare recovery exposure by millions of dollars annually.

Opioids as a Major Cost Driver in Medicare Allocations

Mitigating the high expense of prescription medications has been a challenging endeavor for all involved in claim management. Many organizations have turned to Pharmacy Benefit Management (PBM) to assist in reducing the overall spend per insured. In many cases, PBM's have had success in reducing costs for their clients. This approach enlists a variety of tools to assist with the overall reduction in medication over-utilization and expense.

The first method is the promotion of comprehensive training with physicians and pharmacists. This practice is a significant part of the equation. This engagement attempts to impact behaviors that promote the appropriate prescribing of medications. Second, is negotiating with drug manufactures for the best possible pricing. This is a cornerstone component of reducing overall expense. And finally, the creation of pre-approved formularies aids in the reduction of medications that are often over-prescribed or do not meet medical necessity requirements. When utilized properly through standard best practices, these components lead to an overall average decrease in drug spends and drug prices in the allocation. *

> **Comp Pharma Article 11/2017*
> *Survey results over the last seven years indicate drug costs dropped in five of those seven years; spend today is 22% lower than it was seven years ago. Payers experiencing decreases in drug costs identified lower claim volumes, decreased usage of opioids and compounds, and a variety of clinical management changes as key drivers of lower spending.*

The "Non-Submit" Alternative to Traditional Medicare Allocations
Over the past several years, the notion of settling with a non-submitted Medicare Set-Aside (MSA) has become increasingly more popular. The Centers for Medicare and Medicaid Services (CMS) Workers' Compensation Review Contractor (WCRC) often times is inconsistent in its reviews of Workers' Compensation Medicare Set-Asides (WCMSAs), as such, predictability is an issue. Further, as the WCRC is privately contracted and replaced roughly every 4 years, at times there is a learning curve with a new contractor or increased wait times. Many cannot forget the wait times in CMS approvals that occurred back in 2011 which lasted nearly a year to have an MSA approved. Adding to the mix of issues of submitting an MSA to CMS is an obvious one: inflated MSA values not based upon evidence based medicine guidelines or state laws. CMS further is often including multiple opioids in an approved MSA, to a level of opioids which might kill or severely impair the beneficiary if they were to take the prescription regimen that was allocated for in the approved MSA.

Submission of an MSA to CMS is not required, even if review thresholds are met. CMS has stated this in their policy guidance (the WCMSA Reference Guide) and other memoranda. Where parties submit an MSA to CMS, and they disagree with CMS' determination, the only review process available is submitting a re-review request. Essentially, the parties are sending their MSA determination back to the same reviewer that made the determination in the first place. If after a re-review the parties still disagree with CMS, there is no further recourse to appeal the determination. Non-submitted MSAs add the most tangible benefit of leaving the full due process/appeals process available to the parties should CMS ever

question the MSA. Further, a Non-Submit MSA is accurate and fast, as the parties can rely upon the correct application of evidence- based medicine and state law to the allocation. While CMS' most recent/last WCRC contractor Provider Resources) has had fast turnaround times with its MSA reviews, a new WCRC contractor, Capitol Bridge LLC, has been awarded the WCRC contract and any changes in procedures and turnaround times remains to be seen. Despite the best efforts of Capitol Bridge, we will likely continue to see parties opting to use non-submitted MSAs due to the flexibility and cost-savings they provide.