

MSA Insider



Getting You to Settlement



New Federal Legislation: Update

Q2 Edition . 2008

In our last *MSA Insider* we provided some of the details regarding the “Medicare, Medicaid and SCHIP Act of 2007” that passed late last year. In summary, this new law requires that workers’ compensation (WC), no fault, and general liability carriers to report the terms of any settlement agreement to the Department of Health & Human Services (HHS) involving a Medicare recipient or face a civil penalty in the amount of \$1,000 per day. We are still waiting for the Secretary of HHS to issue a policy memorandum or regulations to fill in some important gaps that were not addressed in the Act. For example, the Act does not specify how long after the settlement the carriers will have to report the terms of the settlement. The Act only indicates that it will be a “reasonable” amount of time.

Many of our clients have been asking questions about the Act and we have been in frequent contact with The Centers for Medicare & Medicaid Services (CMS), a division of HHS, to see if we can obtain some answers. At this point nothing is official, but we can share with you some of the information that we obtained.

First, CMS has no immediate plans of issuing a policy memorandum as to how a Medicare Set-aside (MSA) should be calculated for a general liability claim, even though CMS has acknowledged a general liability claim has different elements and issues than a WC claim.

Second, CMS is not going to have a formal approval process in place for general liability MSAs like it does for WCMSAs. The approval of general liability MSAs is going to be left to the discretion of the ten (10) CMS Regional Offices. *(For a list of the Regional Offices and the states each office is responsible for, please go to www.cms.hhs.gov/RegionalOffices)* As can be imagined this is going to create a lot of confusion and uncertainty as each Region (if it is going to review general liability MSAs at all) will have its own set of rules and requirements for the submission and approval process. Large, multi-state carriers are going to have to be familiar with requirements for each Region as well as the states associated with each Region.

This is the same system that CMS had in place for WC claims a few years ago before it instituted a more formal and uniform submission and approval process for WCMSAs. Hopefully, CMS will see that the Regional approach is too cumbersome and will move the general liability MSAs to a more formal process as well. MedAllocators, Inc. will continue to monitor this situation and will provide updates as soon as CMS releases any more detailed information.

MedAllocators News

Florida RIMS 2008

MedAllocators’ Michael Merlino and Leslie Schumacher, will be presenting this year at the Florida RIMS conference on July 29th - August 2nd.

Michael Merlino, *Nominated Super Lawyer*

Michael Merlino, MedAllocators’ Compliance Director, has been recognized as a 2008 Georgia Super Lawyer. Only 5% of GA lawyers have been given this honor. Congratulations Michael.

National RIMS 2008

Come visit MedAllocators in San Diego, CA for the National RIMS conference on April 27th - May 1st, booth #3104.