Medicare Liens: Another Concern Prior to Settlement?

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In our last post, we discussed the issues posed by ERISA liens and how the presence of an ERISA lien can complicate a potential settlement. Another similar issue that complicates settlements is the potential presence of a Medicare lien. This applies to workers' compensation and liability cases.

The Medicare Secondary Payer Act (MSPA), 42 U.S.C. 13957(b)(2), prohibits Medicare from making medical payments on behalf of a Medicare beneficiary if a primary plan (liability, workers' compensation, or no-fault insurance policy) has the responsibility to pay for such treatment. The MSPA specifically requires primary plans to reimburse the appropriate trust fund for any payment made by Medicare if it is demonstrated that the primary plan has or had a responsibility to make the payment. Payments made by Medicare which are the responsibility of a primary plan are conditioned on reimbursement, and are referred to as "conditional payments." A primary plan's responsibility to reimburse Medicare for these payments may be demonstrated by a judgment in favor of a beneficiary, a settlement with a beneficiary, a contractual obligation to pay a beneficiary, or by other means.

In order to access whether you are dealing with a potential Medicare lien, you first need to determine if a claimant is a Medicare beneficiary. This can usually be determined by evaluating a claimant's age. Most individuals are entitled to Medicare coverage when they reach sixty-five (65) years of age. However, a claimant can become a Medicare beneficiary prior to reaching sixty-five (65) years of age in certain circumstances. Usually, this will occur when a claimant has applied for, and is awarded, Social Security Disability benefits. A claimant can also be entitled to Medicare coverage if he/she had End Stage Renal Disease (ESRD). As such, prior to settling a claim, you always want to determine if the claimant is a Medicare beneficiary, and in fact, federal law requires you to make that determination.

If you determine a claimant is a Medicare beneficiary based on age, entitlement to Social Security Disability, or ESRD, then you need to access whether Medicare is asserting a lien pursuant to the MSPA. Usually, if a workers' compensation claim has been accepted as compensable and all medical payments have been made through workers' compensation, there should be no lien. However, you will still need to confirm this with Medicare prior to any settlement through a request for lien information to the Centers for Medicare and Medicaid Services' (CMS) relevant contractor. The CMS contractor that handles lien recovery in accepted workers' compensation claims is the Commercial Repayment Center (CRC).

If the claimant is a Medicare beneficiary and has a workers' compensation claim that has been denied, or a liability claim, then it is more likely that Medicare paid for some medical treatment and a lien will be asserted. Again, you will need to confirm whether a lien is being asserted and the amount of lien through a request for lien information to CMS' relevant contractor. The CMS contractor that handles lien recovery in denied workers' compensation and liability claims is the

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Benefits Coordination and Recovery Center (BCRC).

If a lien is being asserted, CMS will send a Notice detailing the amount of the lien and the specific medical treatment paid for by Medicare. This Notice should be reviewed carefully, as CMS will oftentimes include medical treatment paid for by Medicare that is not related to the injuries being alleged in the workers' compensation claim. If you feel that CMS is including treatment in the lien that was not related to the workers' compensation claim, then you can submit a dispute letter to CMS challenging the validity of the charges. This is easier for a Defendant to do in a workers' compensation claim. In a liability claim, the claimant should be the one disputing the lien.

The issue of payment of a potential Medicare lien should be resolved as part of settlement discussions. It should be made clear which party will be responsible for paying the Medicare lien. Once payment of the lien is made to CMS, a closure letter will be issued advising the parties that the lien issue has been resolved.

It should also be noted that a lien letter from CMS will only cover any medical payments issued by Medicare Parts A and B. If claimant has a Medicare Plan under Parts C or D, then you will need to specifically request lien information from the administrator of that Part C or D Plan. So, in addition to determining if a claimant is a Medicare beneficiary, you will need to determine if the claimant is covered by a Medicare Part C or D plan.

If you have any questions or concerns about Medicare liens, we encourage you to reach out to our Medicare Compliance Group. The group is led by Shannon Metcalf, who is a certified Medicare consultant.

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