Medicare Set-Asides and Medicare Compliance

Key Contacts

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Overview

Hedrick Gardner's Medicare Set-Asides and Medicare Compliance Group provides clients with comprehensive Medicare compliance counsel and oversees and assists other Hedrick Gardner attorneys in handling Medicare issues at all stages of the litigation process.

As Medicare continues to solidify its presence in the insurance industry, Hedrick Gardner has been at the forefront in tracking the ever-changing landscape of Medicare compliance and providing critical legal counsel to clients in both the workers' compensation and civil litigation settings. With the passage of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), it is clear that Medicare expertise is a fundamental component of handling and litigating insurance claims involving Medicare beneficiaries. Not only do insurers face huge federal penalties if they fail to adequately report applicable Medicare claims to CMS, but they also risk facing additional penalties if they fail to adequately protect Medicare's interests in handling/resolving claims.

In light of CMS's enhanced enforcement capabilities and growing federal enforcement policy objectives, it is essential to have legal counsel that understands the complexities and realities of properly handling Medicare claims. Hedrick Gardner's Medicare Compliance Group is uniquely situated to assist companies with their Medicare needs, whether related to a specific claim or to general compliance concerns. We can assist companies on both a local or national level and are equipped to provide counsel on limited Medicare issues or handle all aspects of a claim. Additionally, due to our familiarity with the claims process, as well as our lean litigation approach, we are best situated to efficiently and cost-effectively handle settlement administration issues that may otherwise be referred to an outside vendor.

Services Specific to Workers' Compensation Claims

- Counsel regarding when a Medicare Set-Aside (MSA) is required or recommended in light of the value of the case and need for future medical treatment, CMS policy memoranda, and underlying Medicare Secondary Payer (MSP) statute.
- Preparation and submission of MSAs to CMS for approval.
- Preparation of Medical Cost Projections, which are helpful for cases that do not need formal MSAs and can be used for setting reserves and negotiating settlements.
- Counsel regarding funding options and MSA administration as it fits the needs of each particular case.

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- Preparation of Zero-Dollar MSAs and counsel regarding when a Zero-Dollar MSA is appropriate given the claim facts, state law, and CMS guidance.

Services Relating to All Claims

- Verification of the claimant's Medicare and Social Security Disability status.
- Conditional Payment "lien" resolution services, which includes lien verification, and working with all parties to assist in lien reduction or negotiation efforts to eliminate roadblocks to a successful settlement of the claim.
- Settlement document preparation services, which includes drafting language to document how the parties considered Medicare's interests as a part of the claim settlement, language setting forth the parties obligations with respect to Medicare and the handling/distribution of settlement funds, language necessary to facilitate a successful approval process with CMS, and language that provides additional contractual provisions to protect the client from post-settlement liability.
- Consultation relating to implementation and compliance with the Mandatory Insurer Reporting provisions of the MMSEA.
- Counsel and training regarding critical aspects of insurer (primary payer) compliance with the Medicare Secondary Payor (MSP) Act, including Medicare's superior right to reimbursement from settlement funds or judgments, and the necessity of, and best practices for, protecting Medicare's interests at all stages of a litigated or non-litigated insurance claim.

Services Specific to Civil Litigation Claims

- Thorough review and analysis of Medicare's interest as it relates to future medical treatment, which involves weighing the value of the case, policy limits, the likelihood of future medical treatment, comparative fault or other legal defenses, the options available to administer funds for future treatment, and the relative risks and costs associated with all options.
- Counsel regarding set-aside options and preparation of Liability MSAs.

Resources

- Medicare Consent to Release

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