NAMSAP

National Alliance of Medicare Set-Aside Professionals

Quarterly Newsletter

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IN THIS ISSUE

NAMSAP is the only non-profit association exclusively addressing the issues and challenges of the Medicare Secondary Payer Statute and its impact on workers' compensation and liability settlements. Through the voluntary efforts of our members, NAMSAP is a forum for the exchange of ideas and is a leading resource for information and news in this constantly evolving area of practice. The collective knowledge of our members and NAMSAP's resources will provide you with the ingredients essential to your success!

PRESIDENT'S LETTER

Dear Members,

It is hard to believe that Spring is upon us and we have all changed our clocks!

Spring is also Election Season in NAMSAP. We have put out a Call for Candidates, as there are three open seats on the Board of Directors. In 2012 we finalized a series of Bylaw changes that created the position of President Elect and term limits for all board members. Please consider investing your time in support of the only trade association and education group in our industry.

Our Annual Education Conference is in Baltimore April 25th and 26th; we hope to see you there. CMS has formally agreed to appear and provide insight to our group. We have over a several month period worked with CMS to provide content for their presentation. We have submitted a lengthy list of questions, from which they will select topics that they can respond to at the meeting. We look forward to working with them.

In addition, the conference will provide a broad range of exciting topics relevant and timely. One of the interesting issues arising is the involvement of Medicare Advantage plans in our world. Many of my clients are concerned in this area; I look forward to this presentation, as I think it will help me answer my customer's questions.

My most exciting news is that in April, Doug Shaw of Medivest, will assume the office of President of NAMSAP. Doug comes to the role with a wealth of knowledge and a strong belief in NAMSAP. Like all organizations, evolution is the key to survival. Not that long ago being a Medicare Secondary Payer specialist, merely meant you could do a good allocation. In just these last few years we have seen the explosion of topics and information we need as professional, grow immensely. Doug is poised to lead NAMSAP to that next level of success as our professional organization,

See you in Baltimore!

Sincerely,

Michael E. Westcott

SMART Changes to Medicare Secondary Payer Law

by Roy A. Franco

At the close of 2012, the Medicare Advocacy Recovery Coalition (MARC) and NAMSAP held its collective breath as the 112th Congress deliberated on changes to the Medicare Secondary Payer Act. Bi-partisan legislation introduced by Congressman Tim Murphy, from Pennsylvania, and Ron Kind, from Wisconsin, the previous year was gaining momentum after it passed the Energy & Commerce Committee last September without objection. Standing in the way of a House vote was the upcoming Presidential election, intensified political gridlock associated with an election year, and a nod from the House Ways & Means demonstrating their support. Many felt the task impossible, but the political status quo after the election, and Congressional desire to pass pilot project legislation for Medicare involving intravenous immune globulin created a window which allowed the Strengthening Medicare and Repaying Taxpayer Act (SMART) to sail through the House. As unlikely the odds were, NAMSAP member's steadfast support helped to change the Medicare Secondary Payer Act.

The vote itself did not take long, once the political process was cleared. With little opposition, the SMART legislation was brought to the House Floor for a vote on what is called the suspension calendar. Three voted "no", but 390 were in favor and under the House rules, the motion to suspend the House Rules and Pass as Amended H.R. 1845 was carried. The House legislation was then transmitted to the Senate for consideration, and as a testament to the bipartisan support, the matter was taken up in less than two days, and passed unanimously. All that was left was for President Obama to sign the legislation, which he did on January 10, 2013. For over 10 years attempts have been made to change the law, now based largely upon the support of NAMSAP members, we did it and should be proud of that accomplishment. SMART did not address any Medicare Set Aside issues we presently face, but it does require the Centers for Medicare & Medicaid Services (CMS) to implement regulations. MARC hopes CMS will use this as an opportunity to overhaul all of the MSP regulations that have not been touched since 1989.

SMART is intended to effect major changes and provides more efficiency and certainty to the MSP process for non-group health plans such as workers' compensation, liability and no fault carriers, including self insurance (Primary Plans). The Act effectuates changes important and beneficial to all involved in a claim, no matter the line of business – be it lawyers, Medicare beneficiaries, or primary plans. It created a win-win-win situation for all sides, including the Government. The Government won because it improved reimbursements and saved $45 million in costs. Beneficiaries won because they knew what to pay Medicare and what to keep in a relatively short period of time, and Primary Plans benefited from being able to secure finality when resolving a claim – be it workers' compensation or liability matters.

Continued on page 4

Now that it is law, the Centers for Medicare and Medicaid Services (CMS) will be required to implement it. How it will work and its impact will require time to sort out. One thing is certain: Our industry will soon have some new tools at its disposal.

SMART comprises five sections, each with its own effective date. Some parts of the law require CMS to promulgate new regulations; other parts require no further action by CMS. What's important is when to apply each section. The effective date is key, but whether or not regulations are required would also a determining factor.

Section 201 - The Reimbursement Process

This part of the law is effective nine months from enactment. It requires CMS to establish a website (or similar technology) that would be accessed by the Parties through an assigned user name and password. If properly accessed, by the beneficiary, beneficiary's representative or primary plan with consent of the beneficiary, the Parties will be able to download a statement of reimbursement that can be used for settlement purposes. If such statement of reimbursement is downloaded within three business days of the settlement, Medicare is bound by the amount.

The process is designed to work as follows. First, the Parties will need to anticipate a settlement date that will occur within the next 120 days. CMS, after such notice, will have 65 days to populate the new website with reimbursement information, and update this information within three days of paying for additional items and services. Should the information not be available by the 66th day, CMS cannot collect any conditional payments so long as the settlement occurs within the stated period. CMS can protect itself by submitting a 30-day extension before the expiration of 65 days. If no information is available the day after the 30-day extension expires, then CMS is barred from further conditional payment recovery under the law. CMS will more than likely meet its obligation, and if it does, then any download that occurs within 3 business days before a settlement date is the final reimbursement amount owed Medicare.

If the parties disagree after seeing the reimbursement information on the new website, then the law allows the Parties to submit a request to remove unrelated charges, or even add missing charges. CMS must respond within 11 business days, if not, then the adjusted amount submitted by the Parties stand as the final reimbursement amount owed Medicare. CMS will not be able to dispute this number if the settlement occurs within the 120-day period as outlined in the original notice. If CMS does respond then the number proposed by Medicare stands, and the Parties have no right of appeal. Parties can accept that number or default back to the appeal process with the MSPRC that exists today.

The regulations necessary to implement this part of the law will be important. MARC is leading the effort to properly develop the regulations so they are not unwieldy and easy to understand. This part of the law, while effective in nine months, cannot move forward absent regulations. Therefore, unless otherwise directed by CMS, the existing MSPRC portal cannot be used as a substitute to secure a download for conditional payments upon which CMS will be held to. The SMART portal will not be available until regulations are established which could exceed the effective date of this law.

Section 201 – Right of Appeal

For the first time Primary Plans have a right of appeal. Beneficiaries must be given notice of any appeal undertaken by an insurance plan. Beneficiary consent is not required. CMS must draft regulations that give applicable insurance plans limited appeal rights to challenge final Conditional Payment amounts. However, Congress did not provide CMS with any required timeline.

Continued on page 5

It would appear that no appeal can be taken until regulations are promulgated. If no administrative remedy exists, the Parties may take their case to Federal District Court. Regulations are not necessary to confer jurisdiction created by statute. Regulation will allow a court to dismiss for lack of administrative exhaustion, but until then the Primary Plan can appeal.

Appeal is limited to conditional payment demands by CMS. Medicare Set Aside determinations do not fall into this category. It is not a demand by CMS, as the process for workers' compensation is only recommended. Should CMS require the process, the appeal right would be applicable as it would be a determination as defined under the law. Nonetheless, if after a Medicare Set Aside is established these appeal rights are only applicable in the event CMS attempts to collect reimbursement from the plan. Existing appeal rights for beneficiaries remain the same.

Section 202 - Claims Threshold for Collection

This section of the law applies only to liability claims. No Fault and Workers' Compensation were removed at the request of CMS during political process. SMART requires CMS to establish annual thresholds, which will exempt MSP compliance. Today, CMS by policy has established a $300 exemption for a settlement, judgment or award. This amount will change annually, and is to be published each year on November 15th for the next calendar year. The law also requires CMS to study the threshold for No Fault and Workers' Compensation and submit an annual report. The plan is to use these reports to convince Congress to add the threshold for the other lines of business or convince Medicare to do it voluntarily.

The threshold is calculated with input from the Government Accountability Office (GAO). Basically the cost of Medicare Secondary Payer recovery process is calculated and a cost per liability claim is established. Once that number is known, the Secretary must identify the corresponding TPOC number that correlates to such cost to establish the threshold amount. For example, if the cost to CMS to recover on a liability claim is $1, then that cost is correlated to all $1 conditional payment claims and the related TPOC that is usually associated with that conditional payment recovery. If an amount owed is under that threshold amount, CMS is barred from seeking repayment. The threshold will be calculated and adjusted annually.

Section 203 - Reporting Requirements

CMS has discretion in applying reporting penalties on insurance companies. Previously, any reporting error by an insurer was subject to a $1,000 a day penalty. The SMART Act amends the statute to allow for discretion in the amount of the penalty based on the severity of the violation. Regulations will be required and will include safe harbors. CMS must put forth a Advanced Notice of Proposed Rule Making (ANPRM) to seek guidance from the industry on potential safe harbors.

Section 204 - Use of Social Security Numbers in MSP Reporting

CMS is required to modify plan reporting requirements within 18 months so that plans do not have to use SSNs or Health Identification Claim Numbers (HICN). CMS may have an additional 12 months if it affirms to Congress it needs more time. This provision addresses several policy concerns related to privacy and reporting problems. Medicare will require financing to convert its systems to avoid use of the SSN or HICN. Based on the long implementation period and present state of affairs with respect to the U.S. Budget, this aspect of the law may take more than two years before it is implemented. In the interim, CMS will be authorized to use the SSN and HICN.

Continued on page 6

Section 205 - Statute of Limitations

The heart of SMART is this provision where CMS is limited to bring an action within three years from the time they are notified of a settlement to seek payment for medical item and services provided. This provision will eliminate a CMS push for a six-year statute of limitations that had recently been argued in the 11th Circuit. It will also no doubt shape professional administration and structures as clear timelines are now in force.

The effective date for this law is six months from enactment and requires no regulations.

Conclusion

Thank you NAMSAP. Your original investment in MARC beginning in 2008 has paid off and all of you should be commended for supporting your leadership to engage in this challenge. Now that the law has passed, we have all taken a big step to correct some of the rough edges of this law. The next phase will require the same diligence. CMS is required to promulgate regulations, and it is widely suspected that they will use the opportunity to perhaps update all regulations to be more consistent with the amendments to MSP, including Mandatory Insurance Reporting. To make certain we don't lose any ground, it is important to remain involved and support MARC with phone calls when we need them, as well as financially.

Roy A. Franco is the Chief Legal and Compliance Officer for Franco Signor LLC which specializes in mitigating MSP exposures for all lines of business. Prior to founding his present Company, Roy was the Director of Risk Management for Safeway Inc., and oversaw its claims operations, insurance program and risk management strategies. During his 17 year tenure with Safeway, Roy was exposed to the challenges of Medicare Secondary Payer Compliance.

In 2007, Roy started a grassroots organization in the San Francisco Bay Area to garner interest in Medicare Secondary Payer reform. His efforts led to the formation of the Medicare Advocacy Recovery Coalition (MARC) which he serves as Co-Chair. Through his leadership, MARC is recognized as the leader on MSP reform and is established as an important voice for the industry. MARC is made up of over 80 members comprised of self insured companies, insurance carriers, MSA providers, law firms and other associations.

Roy is recognized as a national expert on Medicare Secondary Payer compliance. He is a speaker on the topic and a published author. His book, Medicare Secondary Payer Compliance may be found on the Juris Publishing website.

NAMSAP Committee News

Education Committee

Currently the Education Committee is focused on rejuvenating the Webinar subcommittee, which is chaired by Shawn Deane. Currently Shawn is working on educational webinar's which will periodically be offered throughout the year.

The co-chairs of the education committee (me and Tom Spratt) are preparing for the annual NAMSAP meeting in Baltimore, MD at this time. The annual meeting site sub-committee is actively making the final preparations for what will prove to be filled with exciting learning opportunities.

Christine M. Melancon, RN, CCM, MSCC, CMSP, CNLCP | VP of Operations

EZ-MSA Services

Webinar Committee

The NAMSAP webinar subcommittee is looking for presenters for this year's NAMSAP webinar series. The goal of the committee is to provide a wide-variety of quality webinar presentations for the NAMSAP membership (for CEU credit), which cover a range of topics affecting the Medicare Set Aside and Medicare Secondary Payer compliance industry. If you would like to present, or have an idea for a proposed topic, please reach out to subcommittee chair, Shawn Deane, at: sdeane@cpscmsa.com / (978) 825-8158.

The committee welcomes proposals for presentations on any MSA/MSP topic. For potential presenters, some of the proposed topics, include, but are certainly not limited to:

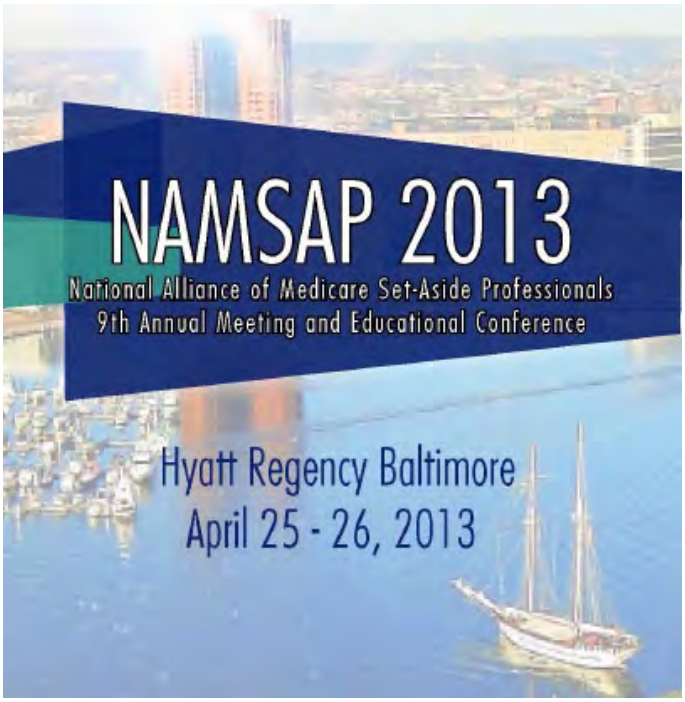
Liability Medicare Set Asides (LMSAs)
WCMSA Submissions & Portal Trends
MSP Case Law Update
Structured Settlements & Post-Settlement Administration in MSAs
Ethics/Ethical considerations in MSP Compliance
Medicare (Part D) Prescription Drug Issues in MSAs
Conditional Payment Recovery Update
Section 111 Reporting
MARC Initiatives/MSP Legislative Update
MSP Denial of Service Issues
Medicare Advantage (Part C)
State of Rated Ages in MSAs

The NAMSAP webinar subcommittee appreciates everyone's involvement and looks forward to a great 2013 webinar series. Please contact Shawn Deane with any webinar proposals/interest in presenting.

Sincerely,

The NAMSAP Webinar Subcommittee
Shawn R. Deane

Have You Registered Yet?



Hotel Information

Reserve your hotel room at the Hyatt Regency Baltimore 300 Light Street, Baltimore Maryland for the conference and receive the discounted rate of $174 for single/double occupancy. To receive this rate, you must book your room by Monday, March 25, 2013.

To reserve your room, call (888) 421-1442, please make sure that you reference NAMSAP or to reserve online **CLICK HERE**.

Continued Education

NAMSAP has applied for CWCP, CMSP, CRC, CCM. CLE, MSCC, CLCP, Life & Health and Property & Casualty Continued Education credits.

Program Highlights

CMS Update - Representative(s) from CMS will join us for a discussion on recent events and topics that could shape our industry for years to come.

ANPRM and You - The Advanced Notice of Public Rule Making regarding Liability MSA's that was released by CMS last year got the attention of many. Join us for a discussion and different perspectives shared by members of the American Assoication for Justice, the Defense Research Institute, and the American Bar Association.
Sarah Rooney - The American Association for Justice (AAJ)
Mary Re Knack - Defense Research Institute (DRI)
Invited: American Bar Association (ABA)
Moderator: Tom Spratt - Protocols

Medicare Advantage Plans - Medicare Part C plans are becoming more and more prevalent in our industry. Our panelists will discuss the basics of a Part C plan and how they differ from other forms of Medicare.
Marty Cassavoy - Crowe Paradis
Russell Whittle - Gould & Lamb
John Kane - Liberty Mutual

View from the Hill - You will not want to miss this session as our invited guest from Capitol Hill will discuss new laws and their effect on the MSP industry.

Achieving Successful Outcomes in Lien Resolution - Our panelists will present tactics and strategies for obtaining positive results when negotiating Medicare, Medicaid, and private insurer liens.

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