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VIA EMAIL

Jacquiline Cipa
Division Director
Center for Medicare and Medicaid Services
Office of Financial Management, Medicare
Secondary Payor Unit
7500 Security Boulevard
Baltimore, MD 21244

RE: MSA Reporting Procedures

Dear Jacqui:

Over the past year, MARC has written to CMS on several occasions regarding the workers' compensation Medicare Set Aside reporting process, and the Agency's inability to issue regulations that address the full range of cases in which CMS requires reporting. In light of the recent changes to the User Guide, as well as the March CMS Town Hall call on MSA reporting, we wanted to bring several issues to your attention that continue to remain troubling for workers' compensation claims payers.

1. **Multiple Date of Loss Reporting TPOC Issues** – The CMS "multiple date of loss" policy does not reflect how claims handlers settle claims. As we have previously noted to CMS, RRE claims systems do not attribute settlements for different claims at different times to the earliest date of loss, nor should they as that would not be accurate. When pressed on this issue, CMS's response has been that it is simply codifying previous policy. Respectfully, however, reporting all settlements in a case where a beneficiary has multiple injuries

back to the first date of injury has never been CMS communicated policy and RREs have never reported claims in that way. In fact, injuries associated with the more recent date of injury claim(s) are typically necessitating the settlement to begin with. CMS's decision to adopt the policy may be convenient for the Agency but it completely ignores the practicalities and realities of commercial claims systems. We again formally request CMS repeal this policy.

2. **Case Control Number "Hard Error"** – On its latest webinar CMS explained that parties should "populate all fields if applicable" (or words to that effect) and that it would be making changes to the User Guide to reflect that case control number (CCN) is to be reported to the extent that it exists. However, if a CCN is provided and it cannot be matched to an existing CCN, CMS will trigger a "hard error" that will not allow CMS to process the Section 111 report. Basically, unless the CCN is exactly right and matched to a claim that is in CMS' system, the file will be rejected. We believe this system is contrary to good policy, prevents timely reporting, and mandates reporting of information CMS not only already has, but actually issued. Case control numbers are generated in the Workers Comp Case Control System (WCCCS) and are provided back to the submitter of record (beneficiary, MSA vendor, etc.). There is no way for an RRE to validate the validity of the WCCCN as it is identified natively within the WCCCS. CMS should eliminate the requirement for the CCN to match, or at most reduce the CCN match to a soft edit (similar to the professional admin EIN) so that the Section 111 reports can process.

3. **Multiple RRE Settlements** – CMS has not considered that there are many cases in which RREs contribute small amounts to large settlements and often do not have a full understanding about an MSA that may be created by another party at the time that the small contributors report. In fact, these small contributors may never become aware of an MSA. The reason is that it has never been relevant for companies contributing minimal amounts of money who have no relationship with the MSA. CMS is now asking those companies to report something to which they have no involvement. Given that CMS can readily program its own systems to connect contributors to a settlement to any MSA set up by one party to the settlement, it is unclear why CMS is asking for these companies to gather information from CMS multiple times over even in cases where the reporting party does not have the information. We urge CMS to relax the MSA reporting requirement in cases where multiple parties contribute to the settlement.

We welcome further discussion about this issue, and will follow up with you to set up a time to speak. Of course, do not hesitate to reach out to me if we can answer any questions about the above information.

Sincerely,

David Farber, Counsel to MARC