

July 1, 2010

CMS Alert on Prescription Drug Coverage and Its Effect on WCMSA Proposals

Centers for Medicare & Medicaid Services (CMS) recently issued a new alert clarifying their April 3, 2009, and July 1, 2009, procedure memoranda regarding prescription drugs administered to Medicare beneficiaries for off-label and/or unlabeled outpatient uses and whether these drugs are considered covered by Medicare Part D and, therefore, appropriately included in a Workers' Compensation Medicare Set-Aside Agreement (WCMSA) proposal. This alert provides the following definition of covered Part D Drugs:

A 'covered Part D drug' is 'a drug that may be dispensed only upon a prescription and this is described in subparagraph (A)(i), (A)(ii), or (A)(iii) ...' of 42 § 1369r-8(k)(2). 42 U.S.C. § 1395w-102(e)(1)(A). For a Part D drug to be covered by Medicare, and thus included properly in a WCMSA, the drug should be prescribed for an outpatient use that is approved under the Federal Food, Drug and Cosmetic Act [21 U.S.C.A. § 301 et. seq.], or supported by one or more citations included or approved for inclusion in any of the compendia described in subsection (g)(1)(B)(I) of 42 U.S.C. § 1396r-8.

Please be advised that for those workers' compensation settlements occurring prior to June 1, 2010, where the settlement included non-covered Part D drugs as part of the WCMSA, CMS will consider funds spent towards non-covered Part D drugs by beneficiaries and claimants as being an appropriate expenditure of funds as part of the WCMSA. Additionally, in workers' compensation claims that were not settled prior to June 1, 2010, where the settlement includes non-covered Part D drugs as part of the WCMSA, CMS will consider a re-pricing of those cases. However, once CMS performs a re-pricing of the WCMSA, beneficiaries and claimants may not use funds from their WCMSA to pay for non-covered Part D drugs, as this would constitute an inappropriate expenditure of WCMSA funds. Please also be advised that for workers' compensation settlements resolved on or after June 1, 2010, where the settlement does not include non-covered Part D drugs as part of the WCMSA, those beneficiaries and claimants also may not use funds from their WCMSA to pay for non-covered Part D drugs. Again, doing so would constitute an inappropriate expenditure of WCMSA funds.

In accordance with this alert, the Medicare Compliance Group will utilize this clarified definition of covered Part D drugs to determine what prescription medications are non-covered Part D drugs and which medications are covered Part D drugs that should be appropriately included in WCMSA submissions on behalf of our clients.

Should you have any questions regarding this new development or for any Medicare compliance needs, please contact the Medicare Compliance Group at the numbers listed below.

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