

Closing Future Medical: Insurance for the Insurer— Protection from Future Liability

*By Lisa Rainey, Vice President, Operations and
Kathy Deland, Administrative Services Manager*

Most of us have either said or heard the following: *“I am not going to settle this claim if we need an MSA. The case becomes too expensive to settle and it’s just too complicated! The claimant will never agree to it.”*

MSP Compliance can be cumbersome— especially if companywide protocols do not exist. The last thing a busy adjuster wants to do is spend time weeding through multiple CMS memos to decipher what needs to be done to comply with Medicare!

Other obstacles to settlement include obtaining the required two years of current medical treatment and Rx records; or going back to the primary physician to confirm treatment options and the Rx regimen. Then there is the aggravation of receiving an “over-inflated” MSA allocation that includes everything under the sun— surgeries the claimant will not have— or does not want— and an Rx allocation calculated over the life expectancy of the claimant.

In addition, we are often confronted with a claimant who is unwilling to sign the releases needed to confirm benefits or simply does not want to settle the case with an MSA— either because he does not want to spend the funds for medical care or does not want to administer the account himself.

Even if insurers are able to resolve all of these hurdles, they still have to deal with Medicare’s timetable for CMS approval and resolution of conditional payments.

Why bother?

Leaving Claims Open Increases Costs

In 2011, California employers paid \$492 million for Workers’ Compensation (WC) administration, anti-fraud programs, workplace safety and compliance. The increase in WC costs was due to rising medical costs— to the tune of *\$1.7 billion* between 2006 and 2010— which includes a *95% increase to pharmaceutical costs*. (*California Workers’ Compensation, System Trends and Performance, Workers’ Compensation Action Network, 2012*).

The longer a claim is left open the more expensive it gets— and if trends hold, the cost of medical will increase to 70% of total claim cost by 2017. (“The Rising Cost of Workers Compensation”; Robert W. Standen, President, Key Risk, a W.R. Berkley company).

In order to avoid rising administration and medical costs, it is imperative that insurers address the issues that hinder resolution and closure of the medical portion of a claim.

Easy Steps to MSP Compliance

Insurers need to help adjusters meet compliance requirements by implementing internal Medicare Secondary Payer (MSP) Compliance protocols. Providing directions from the top down, allows for a uniformed, defensible position when addressing MSP Compliance concerns.

Engaging the services of a risk manager or outside vendor to review internal protocols and assist in the implementation of improvements— as well as to provide much-needed education for the entire staff— is highly recommended. The goal is to streamline a cumbersome activity— that adjusters avoid— into a step by step, easy-to-understand process that ensures flawless execution every time. The most important attributes of the protocols include: (1) when does Medicare come into play; (2) CMS review thresholds for CMS submission; (3) internal thresholds for inclusion of a MSA as part of the settlement; (4) when to obtain a conditional payment letter and how to handle the letter once received; (5) recommendations on settlement language; (6) what type of funding method should be used for the MSA allocation; and (7) direction on how to handle MSA administration. Review internal protocols with an outside expert to create a suite of deliverables that best meet each insurer's compliance needs.

Most MSAs cost about \$2,500. This fee usually includes determining whether or not the settlement meets the CMS review threshold— and estimating conditional payment liability. Not every case needs a MSA or has additional funds available for completion of a MSA. This is when internal protocols come in handy. Using the services of MSA experts ensures the lowest defensible and most accurate allocations— achieving maximum savings for the insurer and faster approvals from CMS— bringing the case to closure quickly and cost-effectively.

Dealing with inflated MSA calculations is where cost containment comes into play— *regardless if the insurer decides to close out medical or not*. Statistics show that the longer a medical claim remains open, the more costly the claim becomes. Establish an internal flagging system that identifies cases that include some or all of the following: (1) claimant has not returned to work in two years; (2) complex injuries and relatively long-life expectancy; (3) multiple interventions currently in progress; (4) catastrophic injuries; (5) multiple narcotics prescribed; and (6) high quantities or brand name drugs prescribed routinely or by multiple prescribers. With cases like these, a NuQuest/Bridge Pointe's Pre-MSA with Drug Regimen Review is needed to intervene as necessary. This critical tactic *reduces the cost* of the claim— and at the same time benefits the claimant by *providing better medical care*. When the time comes to negotiate a settlement, the case is in a better position and the MSA will be appropriate. Reviewing files periodically for cost containment efforts is best practice for all WC insurers.

Ensuring Future Care— Professional Administration

The Workers' Compensation industry must address claimants' concerns in regard to administration of the MSA allocation. Most claimants do not possess the necessary knowledge, skills or resources to understand the requirements of administrating an MSA allocation. This can

become a major source of contention when negotiating the settlement of future medical. First and foremost, claimants and their attorneys require education in MSP Compliance and understand that a MSA is an asset to the claimant.

Using a professional administrator alleviates some of the angst with closing the medical portion of the claim. Professional administrators are able to attend or conference in at mediation to go over any questions or concerns the claimant may have. Professionally administered accounts help protect and extend the life of the funds by expertly reducing medical bills to the appropriate fee schedules. The reasonable cost of professional administration is easily offset by the savings realized from negotiated and reduced medical bills. Using the services of a professional administrator also protects the claimant's future Medicare benefits for injury-related treatment by ensuring that only Medicare-allowable services related to the settled injury are paid from the MSA account and properly reporting to Medicare on an annual basis.

The professional administrator quickly becomes a valuable and reputable point of contact for a claimant who has been accustomed to contacting the adjuster or his/her attorney for answers to coverage questions, interpreting CMS correspondence and more. Professional Administration provides the claimant with the extra security of protecting and extending funds for their future care— and a reversionary clause in the settlement agreement offsets the cost.

Further cost savings is realized by using a structured payment to fund the MSA account. Cost savings can range from 30% upward. Furthermore, professional administration fees can be annuitized as well— allowing for even more savings. Structured payments may also include offering the guarantee of a certain payout period, even for the lifetime of the claimant, should he/she outlive the anticipated life expectancy. The use of a structured MSA ensures that specific funds will be available on an annual basis and encourage fiscal awareness on the part of the claimant. (For example: To not see a lump sum as a financial windfall for unnecessary or inappropriate treatment— thereby exhausting the funds prematurely and permanently)

Stop Crippling Medical Costs from Threatening Future Liability

The solution to rising medical costs is to settle medical whenever possible. Prior to negotiating any settlement, consider cost containment solutions and make sure these are in effect before reviewing the case for an MSA. Internal MSP Compliance protocols should be implemented to address when and how Medicare should be considered in the settlement. Depending on the protocols, obtain an MSA and determine whether conditional payments will be a factor in the settlement— start the conditional payment process early on to alleviate any time delay in receiving the response. Have a MSA vendor or Structured Settlement Broker provide a quote to fund the MSA and the administration of the account. Consider including a reversionary clause to offset some of the administration cost.

NuQuest/Bridge Pointe Can Help!

NQBP offers a complete and innovative suite of pre-and post-settlement solution services to meet all of your MSP Compliance needs.

Our expert team of registered nurses, workers' compensation and liability claims adjusters, professional administrators and specialized legal counsel are ready to work with you to ensure your MSP Compliance requirements are completely fulfilled — *and to your greatest advantage!*

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Call:

***Lisa Rainey, Vice President,
Operations***

321.460.5015

LRainey@NQBP.com

www.NQBP.com