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Identifying Medicare Advantage Plans in Workers' Compensation Claims

By Katie Hammers

Medicare Advantage Plans are continuing to grow in popularity. However, identifying Medicare Advantage Plans that have an interest in a workers' compensation claim has always been an issue. In the past, there was no reliable way for a workers' compensation insurer to determine if an injured worker was enrolled in a private Medicare Advantage Plan (Part C) or Prescription Drug Plan (Part D). According to CMS, it is estimated that 1 out of 3 beneficiaries have a Part C plan, and 9 out of 10 have some form of Part D. Despite how common these plans are, injured workers are often unaware they are on a Medicare Advantage Plan. This is problematic because, pursuant to 42 U.S.C. § 1395y(b)(3)(A), if a primary plan like a workers' compensation insurer fails to provide payment, then the Medicare Advantage Plan can sue for double damages.

Thankfully, the Provide Accurate Information Directly (PAID) Act, has created some tools available to Non-Group Health Plan Responsible Reporting Entities (RRE), like workers' compensation insurers, to assist with identification of coverage. The PAID Act was signed into law in December 2020 and became effective on December 11, 2021.

With the PAID Act now in effect, CMS will provide 3 years of information on beneficiaries' enrollment date for both Part C and Part D. This information will be provided to RREs as part of the Non-Group Health Plan Query Response file. The Query Response will now contain enrollment information and contact information for beneficiaries' Part C & D plans, as well as information about the beneficiary's Parts A & B plans.

With this contact information, the RRE or attorney on the file can reach out to the Part C and/or Part D plan to confirm if payments have been made related to the workers' compensation claim. It will still be important to review any payments made by the Medicare Advantage Plan to confirm that the payment relates to the worker's compensation claim. However, now payments can be identified early on and addressed appropriately. This will help to alleviate the threat of double damages.

The takeaway is that, when running the Section 111 queries on injured workers, look for information about any Medicare Advantage Plans the injured worker may be participating in and share this information with your attorney so that any lien can be addressed promptly and appropriately.

If you have questions about any workers' compensation matter, please feel free to reach out to myself, or any of the attorneys here at Brown & Carlson. Additionally, if this is an urgent matter, please feel free to contact the Brown & Carlson Hotline at (855) 844.7070, as someone will always be available to answer your call.

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