

# MEDIVEST®

## MSP Compliance Solutions



### CMS Provides Notice Regarding LMSA Regulations/Guidance

Once again, the Centers for Medicare & Medicaid Services has provided an indication that while regulations and/or guidance is on its way regarding the protection of Medicare's future interests for liability and No Fault settlements, the proposed rule regarding these have been moved to August 1, 2020 or perhaps further into the future (again). Technically, the information indicates that the Notice of Proposed Rule Making would "clarify existing Medicare Secondary Payer (MSP) obligations associated with future medical items services related to liability insurance (including self-insurance), no fault insurance, and worker's compensation settlements, judgments, awards, or other payments. Specifically, this rule would clarify that an individual or Medicare beneficiary must satisfy Medicare's interest with respect to future medical items and services related to such settlements, judgments, awards, or other payments. This proposed rule would also remove obsolete regulations." The information is also indicating that regulations CMS determines to be obsolete will be removed. See the disclosure published in the Spring 2020 Federal Register Unified Agenda [here](#).

Many in the MSP compliance industry believe that while the regulations and guidance could be focused on clarifying both the need to protect Medicare's future interests and the way to protect those interests for each of the Non Group Health Plan (NGHP) primary plan types (Liability, Self-Insurance, No Fault, and Workers' Compensation), it seems more likely that this particular group of regulations and/or guidance will focus primarily on liability and No Fault settlements. This is because both regulations and guidance have already been published specific to protecting Medicare's future interests in Workers' Compensation settlements in both the Code of Federal Regulations and via the Workers' Compensation Medicare Set-Aside Arrangement – WCMSA Reference Guide Version 3.1.

Regulations regarding this issue would be promulgated by CMS to appear in 42 CFR 405 and/or 42 CFR 411 and would apply to the Medicare Secondary Payer Act (MSP) found at 42 U.S.C. 1395y(b). The removal of obsolete regulations could apply to any of the NGHP types. The MSP, as governing federal law, applies to all of the NGHP types listed above, prohibits Medicare from paying when a primary plan's funds are used to compensate an injured individual as a result of an injury, and provides extraordinary remedies to allow Medicare to recover payments it has made (called conditional payments) when it pays for an injured party's medicals without regard to the dates of service for those payments.

## Take Aways

- Considering and protecting Medicare's past interests has become the industry standard and quite honestly a "no brainer" for all NGHP settlement types – liability, self-insurance, No Fault, and Workers' Compensation.
- Whether the announced guidance comes this August or not, doesn't it make sense to help ensure that Medicare's future interests are protected in accordance with existing federal law, i.e. the MSP?
- Helping to ensure that Medicare is not prematurely billed for injury related futures for any settlement type is the right thing to do and helps protect the Medicare Trust Funds.

Count on Medivest to help guide you through some of the complexities associated with MSP compliance.