

April 23, 2012

2012 | 4

Federal government report critiques CMS' Medicare compliance procedures

Late last month, the United States Government Accountability Office (GAO) issued a [report](#) on the policies and procedures of The Centers for Medicare & Medicaid Services (CMS) that govern Medicare compliance issues.

The report came in response to pressure on Congress applied by the [Medicare Advocacy Recovery Coalition](#) (MARC), of which Sedgwick is a founding member. At the June 22, 2011 Senate hearing, several years of advocacy efforts by the coalition resulted in the Senate asking the GAO to investigate all three prongs of Medicare compliance that are managed by CMS: conditional payments, Medicare set-asides (MSAs), and mandatory reporting under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA).

The 43-page GAO report critiqued and made recommendations on all three aspects of Medicare compliance. While the report was deferential toward CMS' policies and procedures, the GAO did harshly criticize CMS for its failure to communicate effectively with those trying to comply with the complex guidelines.

The GAO also acknowledged two items regarding conditional payments:

1. The difficulty presented in settling a case when CMS will not provide a final conditional payment amount *until after a case settles*;
2. The unfairness of CMS demanding 100 percent of the conditional payments, despite the fact that the beneficiary may have accepted pennies on the dollar to settle the case. According to the GAO report, a claimant may recover little from a settlement as a result.

Scenario No. 2 above can be avoided if the beneficiary or his/her representative requests that the appropriate CMS regional office reduce the conditional payment amount prior to settlement. The beneficiary can explain why the conditional payment amount would cause "undue hardship" and request that it be reduced based on the settlement considerations of the case. CMS has admitted that it *does not* publicize this process, thus making it extremely difficult for beneficiaries to understand their rights or receive their fair share of the settlement proceeds. However, the GAO made no recommendations about making this process more transparent for the beneficiaries or those representing them.

Here is a summary of the GAO's recommendations for improving each area of Medicare compliance:

- 1. Medicare set-asides:**
 - a. CMS should provide more clear, concise information about liability-related Medicare set-asides;
- 2. Conditional Payments**
 - a. CMS should set thresholds so that it cannot collect on minimal conditional payment amounts;
 - b. CMS should revise its approach to communication so that beneficiaries are more aware of their rights;
 - c. CMS should create a more efficient system for advising stakeholders of conditional payment amounts;
- 3. MMSEA Reporting:**
 - a. In liability cases, CMS should make the reporting of ICD-9 codes voluntary, as they are often difficult to ascertain.

In our view, the good news is that the GAO has recommended the streamlining and consolidation of communications and directions concerning the conditional payment process. The bad news is that it did not make the same recommendation for the MSA process. However, Sedgwick certainly considers this report to be a step in the right direction. As a founding member of MARC and a representative of its steering committee, Sedgwick is proud of the coalition's accomplishments to date.

But more concrete reform is still needed. We encourage Sedgwick clients and business partners to review and support the [Strengthening Medicare and Repaying Taxpayers \(SMART\) Act](#) (S.1718/H.R. 1063). This law will codify procedures to ensure that the conditional payment process is more efficient and effective. With the passing of the SMART Act, many of the GAO's recommendations will be signed into law and employers will not have to wait for CMS to adopt them. Details about how you can advocate for the SMART Act can be found in the left margin on the MARC website [here](#).

Should you have any questions about the GAO report or other issues related to Medicare compliance, please contact Michael Merlino, Sedgwick VP Medicare compliance, at 678-628-1336 or michael.merlino@sedgwickcms.com.

* * *

Sedgwick Claims Management Services, Inc. is the leading North American provider of innovative claims and productivity management solutions. Sedgwick and its affiliated companies deliver cost-effective claims, productivity, managed care, risk consulting, and other services to clients through the expertise of more than 10,000 colleagues in 195 offices located in the U.S. and Canada. The company specializes in workers' compensation; disability, FMLA and other employee absence; managed care; general, automobile and professional liability; warranty and credit card claims services; fraud and investigation; structured settlements and Medicare compliance solutions. For more see www.sedgwick.com.

Sedgwick client bulletins are available via RSS feed. Visit <http://www.sedgwickcms.com/rss> to subscribe.

Sedgwick Claims Management Services, Inc. • 1100 Ridgeway Loop Road • Memphis, TN 38120 •
800-625-6588