Medicare Set-asides - the Next Major Workers' Comp Cost Driver

As America's workforce gets older, it will have a significant impact on the cost structure of the workers' comp system due to requirements that insurers set aside large sums for medical outlays covered by Medicare.

That's because the costs of claims involving injured workers who are near or older than retirement age tend to skyrocket. This issue could be the next major cost driver in workers' comp as more baby boomers, nearing retirement age, opt to stay in the workforce.

Federal law requires that Medicare approve claims settlements of $25,000 or more for injured workers who are Medicare beneficiaries, who will become beneficiaries within 30 months of settlement or who are receiving Social Security Disability Insurance benefits.

Once approved by Medicare, the payer, typically the insurance company, is required to set aside the entire amount of the settlement for future medical expenses associated with a claim in a trust account in the injured worker's name.

While the process sounds simple, it is anything but. The approval process can add many months to the life of a claim, delaying settlement and substantially adding to the cost of the claim.

Medicare, using an extremely conservative approach to assess future costs, will stipulate a much higher sum to be set aside than anticipated. Under current law, that sum cannot be rebutted once Medicare has made its assessment.

The problem is that treatment costs under Medicare are typically higher than in the workers' comp system, where costs are governed by fee schedules and where insurers can use medical provider networks to control costs.

One area of divergence is drugs. Medicare calculates future drug costs using the average wholesale price rather than state pharmaceutical fee schedules, which include steep discounts.

The higher costs are very real, but unfortunately there is a dearth of data on just how much set-asides add to the cost of a claim.

There are other drawbacks. In a claim without Medicare set-asides, if an injured worker taps future medical treatment funds received through a settlement and uses them for other purposes - say buying a new car - and they later require additional treatment for their injury, they must then pay out of pocket.

But if that person received a settlement with a Medicare set-aside, the agency can come back to the payer and demand payment for the claim, even though it has already been closed and settled.

Medicare serious about recouping costs

The issue has come to the forefront in the last few years as Medicare has gotten serious about recouping its expenses and ensuring that insurers pay those claims themselves.

There is also a likely second wave of claims on the horizon for people who sustained an injury on the job years ago without Medicare set-asides and who experience flare-ups or new symptoms from those injuries after they have become eligible for Medicare.

There are already situations of Medicare seeking payment from insurers related to such expenditures for claims that settled as long as 20 years ago.

One problem with the current process is that in many cases, parties may have reached a potential settlement, only to have the Centers for Medicare and Medicaid Services reject the amount designated as a set-aside. This can completely change resolution and the settlement, particularly in major claims.

While legislators in Congress have introduced legislation over the years to address the issue, none of those measures have made it out of committee. If left unresolved in the coming years, it could have a profound effect on workers' comp premiums.