



CMS' June 8, 2010 Memo Revises Rated Age "Certification Statement" For Medicare Set-Aside Proposals

The Centers for Medicare and Medicaid Services (CMS) has released a new policy memorandum dated June 8, 2010 (June Memo) making substantial revisions to the rated age "certification statement" as previously stated by the agency in its May 14, 2010 memorandum with regard to workers' compensation Medicare Set-Aside (MSA) proposals.

[Click Here to Obtain a Copy of the June Memo](#)

By way of background, CMS in its May 14, 2010 policy memo announced that MSA proposals calculated using a rated age had to include the following certification statement:

Our organization certifies that all rated ages obtained on the claimant, at any time during that individual claimant's lifetime, have been included as part of this submission to the Centers for Medicare & Medicaid Services.

In the short time since being released, the above certification statement has raised several legitimate questions and issues in that the statement would essentially require a submitter to attest to absolute facts over a claimant's "lifetime" that would be difficult or impossible to ascertain in many instances. As such, the statement has engendered much criticism on a number of fronts, particularly with respect to issues concerning practicality and reasonableness.¹

Through the June Memo, CMS has now revised the rated age certification statement that must be included as part of a MSA proposal as follows:

Effective immediately the Rated Age (RA) certification required by the May 14th memorandum is revised to:

"Our organization certifies that all rated ages we have obtained and/or have knowledge of regarding this claimant, and generated at any time on or after the Date of Incident for the alleged accident/illness/injury/incident at issue, have been included as part of this submission of a proposed amount for a Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) to the Centers for Medicare & Medicaid Services."

¹ For a more in depth review of the issues raised in relation to the rated age certification statement contained in CMS' May 14, 2010 memo, please see Part II (pages 3-5) in the article entitled *CMS Announces Important Policy Changes Regarding Off Label Drug Use & Rated Age*, NuQuest/Bridge Pointe Settlement News, June 2010. The information outlined herein regarding the June Memo essentially replaces Part II of that article. This article can be obtained at http://www.nuquestbridgepointe.com/news/uploads/june_2010_settlement_news.pdf

As will be noted, the new statement is more reasonably limited in terms of scope (*all rated ages we have obtained and/or have knowledge of regarding this claimant, and generated at any time on or after the date of incident*) and relation (*for the alleged accident/illness/injury/incident at issue*) than the “lifetime” attestation requirement contained in the May 14, 2010 memo.

It should also be noted that CMS will *not* permit any modification to the certification statement. Furthermore, all other requirements regarding acceptable proof of a rated age remain. On these points, the June Memo states:

The CMS will not accept any variation or substitute wording. If a submitter is including RA information in its WCMSA proposal, the revised certification language must be included as written, with no exceptions. If this specific language is not included as part of the WCMSA proposal, CMS will not accept the RA provided. Instead, CMS will estimate the claimant’s remaining life expectancy using Actual Age. For the convenience of those already in the process of submitting a proposal, CMS will continue to accept the certification language required by the May 14, 2010 memorandum for proposals received up through and inclusive of June 30, 2010.

Note:

All other requirements of acceptable proof of a Rated Age for a claimant are unchanged. Acceptable proof of Rated Age is demonstrated through inclusion of independent rated ages on the letterhead of an insurance carrier or settlement broker.

Overall, the revised certification statement as contained in the June Memo can be viewed as a much more reasonable, workable and realistic standard regarding the use of rated ages as part of a MSA proposal. As such, the June Memo should help alleviate the issues and concerns raised by CMS in its May 14, 2010 memo in regard to the continued feasibility of using rated ages as a possible tool to help reduce MSA allocation amounts.

More Info...

For more information regarding this issue, or any other matter regarding Medicare Secondary Compliance, please email info@nqbp.com.