



## ***BETTER BENEFITS – MORE CHOICES***

*Good News about the Medicare Prescription Drug, Improvement and Modernization Act of 2003!*

### ***Program Integrity Provisions in the New Medicare Modernization Act***

#### **Medicare Secondary Payor (MSP) Provisions**

- ❖ The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) clarifies that Medicare must be reimbursed whenever another insurer's responsibility to pay is established.
- ❖ The MMA makes a technical clarification to ensure that Medicare Secondary Payor Data Collection criteria are the same for hospitals and independent labs performing reference (no patient contact) lab tests.

#### **Demonstration project for use of Recovery Audit Contractors**

- ❖ To identify under or overpayments and collect the overpayments, the MMA instructs the Secretary to conduct a demonstration of recovery audit contractors in at least 2 states for 3 years. Under the demonstration, the Secretary is to determine the percentage of recovered funds that will be retained in the CMS program management account and the contractor's account.

#### **New Anti-Kickback Safe Harbor for Certain Collaborative Efforts That Benefit Medically Underserved Populations**

- ❖ Currently, section 1128B(b)(3) of the Social Security Act provides safe harbors to the anti-kickback penalties for acts involving federal health care programs. The MMA creates a new safe harbor to the anti-kickback penalties for agreements between health center entities and entities providing goods or services. It provides that remuneration in the form of a contract, lease, grant, loan or other agreement between a public or non-profit private health center and an individual or entity providing goods or services to the health center would not be a violation of the anti-kickback statute if such an agreement would contribute to the ability of the health center to maintain or increase the availability or quality of services provided to a medically underserved population.
- ❖ The MMA requires the Secretary to establish standards, on an expedited basis, related to this safe harbor that would consider whether the arrangement (1) results in savings of Federal grant funds or increased revenues to the health center; (2) expands or limits a patient's freedom of choice; (3) protects a health care professional's independence regarding the provision of medically appropriate treatment; and (4) other standards that are consistent with Congressional intent in enacting this exception.

#### **Restoration of Medicare Trust Funds**

- ❖ This provision gives the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, legal authority to transfer money from the general fund to the Medicare Trust Funds (HI and SMI) in order to restore interest income lost by the Trust Fund because of the clerical error that occurred on April 15, 2001. This provision also gives the Secretary of the

Treasury legal authority to transfer money from the general fund to the Medicare Trust Funds (HI and SMI) to correct future clerical errors, provided that the Secretary of the Treasury notify the appropriate committees of Congress of the error and the actions to be taken, before such action is taken

### **Regulatory Reform**

- ❖ The MMA prohibits the collection of interest and the imposition of penalties if a provider follows written erroneous guidance from the government or its agents.
- ❖ The MMA improves education and outreach efforts targeting beneficiaries, providers, and contractors so as to cut down on the incidence of program integrity related problems or concerns.
- ❖ Additionally, the MMA prevents contractors from using attendance at education programs to trigger audits.
- ❖ The MMA establishes standards for random prepayment reviews and limits the use of non-random prepayment review.
- ❖ The MMA requires the Secretary to establish repayment plans in case of hardship. Providers are allowed up to 3 years, or 5 years in cases of extreme hardship to repay.
- ❖ The MMA prohibits contractors from using extrapolation to determine provider overpayments unless there is a sustained or high level of payment error or documented educational intervention has failed to correct the payment error.
- ❖ The MMA modifies the consent settlement process, including the information the Secretary must give the provider, the timeframe for a provider response, and the courses of action available if there is an overpayment.
- ❖ The MMA requires the Secretary to establish a process to notify classes of providers when a particular code is being over-utilized.
- ❖ The MMA describes the rights of a provider when under audit by a Medicare contractor, including the right to written notice, review and explanation of the audit, and appeal rights.
- ❖ The MMA requires the Secretary to establish a standard methodology for Medicare contractors to use when selecting a probe sample of claims for review in the presence of an aberrant billing pattern.
- ❖ The MMA requires the Secretary to establish a process for provider enrollment, and establishes hearing rights for disenrolled providers.
- ❖ Additionally, the MMA requires the Secretary to develop a process to allow providers to correct minor errors or omissions in submitted claims without having to initiate an appeal.
- ❖ The MMA also allows physicians to reassign payment for Medicare covered services to entities with which they have an independent contractor arrangement, such as a medical group, a physician management organization or staffing company.