

FEDERAL GOVERNMENT SHUTDOWN AND ITS IMPACT ON WORKERS' COMPENSATION SETTLEMENTS

The federal government's partial shutdown, while now over, has impacted some of the components related to workers' compensation programs for at least the immediate future. Specifically, some governmental services and agencies that we have come to depend upon for our Medicare Secondary Payer (MSP) compliance efforts were closed, suspended or otherwise impacted. As part of the shutdown, government functions identified as "non-essential" were temporarily suspended, while those functions that were classified as "essential" were still provided, but in many cases with reduced staff and resources from the specific department. Both the shutdown of non-essential services and the reduced resources provided for some essential services, create short-term and long-term challenges for many government agencies, and in some cases significant obstacles for companies that are dependent on those services.

Workers' compensation Compromise & Release (C&R) settlements may be impacted by the shutdown as Medicare Set-Asides were not being approved during the shutdown; however, the extent of the impact is not yet quite clear. Following are some of the immediate short-term impacts to workers' compensation C&R settlements.

SOCIAL SECURITY STATUS VERIFICATIONS

Identified as a non-essential function of the government, all Social Security status verifications were on hold and not processed during the shutdown. Verifications are needed to determine if a Medicare Set-Aside (MSA) is needed on a particular case.

Keenan clients **were not impacted by this**, as Keenan had a workaround in place. Keenan obtains this same information through its current Medicare monthly query.

MEDICARE SET-ASIDE (MSA) APPROVALS

While the Centers for Medicare & Medicaid Services (CMS) approvals are designated as essential services, the agency was operating on reduced staff. For instance, CMS local offices were not responding to approvals during the shutdown. Historically there have always been delays on receiving approvals, and the shutdown likely caused a significant increase to the backlog that CMS faces and delays will likely continue even though the government is no longer shut down.

Keenan is working with clients on a case-by-case basis to identify if the opportunity to settle a specific claim without prior CMS approval is the right decision. While there are risks in settling without prior CMS approval, there are also potential risks and costs in delaying an early settlement opportunity, or missing the opportunity to settle. Keenan is working to implement creative solutions where appropriate, including specific language in Compromise and Release (C&R) agreements, utilizing tentative settlements, as well as reserving the right to dispute an inconsistent increase.

LONG-TERM IMPACT

While the long-term impacts to these services from the shutdown are not entirely clear, it is logical to deduce that it will take these agencies a significant amount of time to clear backlogs even now that the shutdown has ended. Keenan is continuing to monitor this issue and is working on multiple strategies to mitigate the impact to our clients for both the immediate future and during the lingering effects following resumption of CMS operations.

If you have any questions regarding the information contained in this *Briefing*, please feel free to contact your Account Executive, Claims Analyst or Carmella Claridy, Assistant Vice President, at (310) 212-0363 ext. 3738 or cclaridy@keenan.com.

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