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Foundations of Medicare Set-Asides

Presented by:

Virginia Stanley | ExamWorks Compliance Solutions

(SVP, Business Development)

virginia.stanley@examworkscpliance.com | (239) 288-9363

Steve Peacock | Safety National

(AVP, Client Engagement)

stephen.peacock@safetynational.com | (314) 692-9524

Training Topics



- When is an MSA recommended?
- Proactive preparation for an MSA
- MSA Process
- CMS Submission
- Mitigation Tips (Pre-CMS Submission)
- Evidence-Based MSAs



Medicare Set-Aside

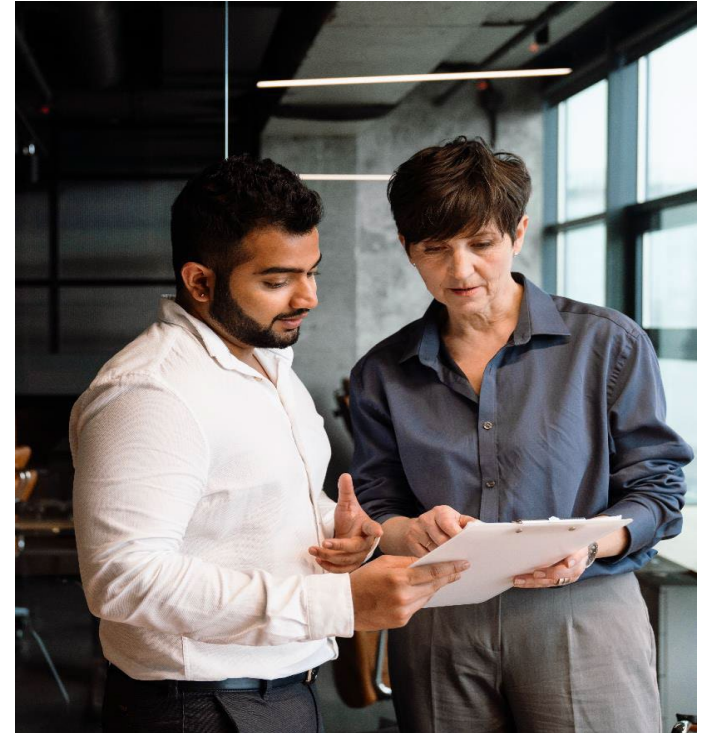


Why get a Medicare Set-Aside (MSA)?

- No statutory requirement for parties to get an MSA.
- There is a requirement that Medicare's interest be taken into consideration for settlement, so the burden of future medical benefits is not shifted to Medicare.

Risk of not obtaining an MSA in your settlement

- Centers for Medicare & Medicaid Services (CMS) may bring an action against any party that received payment from the settlement. This can include injured worker, insurers and even the attorneys to the settlement.



MSA – CMS Threshold for Review



- When is an MSA recommended?
- CMS has settlement thresholds to review Medicare Set Asides (MSA)
- If the claim does not meet the threshold for review, should I still consider an MSA?
 - If a Medicare beneficiary – yes! With WCMSA reporting requirement in place, CMS can see what you did (or did not) do to account for future medicals.
 - If non-beneficiary and below threshold or doesn't meet CMS threshold criteria – no MSA required.
 - MSAs can be more aggressive if CMS submission is not required – more flexibility

Class I Beneficiary



Individual is a Medicare Beneficiary

- ✓ If the total settlement amount is greater than \$25,000, CMS will pre-approve an MSA proposal.
- ✓ Obtaining an MSA is recommended for any claim involving a Medicare beneficiary that meets the +\$25,000 threshold.

Class II Beneficiary



Reasonable Expectation of Becoming a Beneficiary Within 30 Months

If the total settlement amount is greater than \$250,000, and there is a reasonable expectation of the injured worker becoming a Medicare beneficiary within 30 months from the date of settlement, CMS will pre-approve an MSA proposal.

Reasonable expectation includes:

1. **Social Security**
 - a. Currently receiving SSD benefits
 - b. Has applied for SSD benefits
 - c. Previously received SSD benefits and remains eligible
2. Denied Social Security, but is/plans on appealing
3. Age 62 and a half or older
4. Has end-stage renal disease

If the injured worker meets one or more of these criteria and the total settlement amount is \$250,000 or less, a pre-approved MSA proposal is not necessary; however, Medicare's interests should still be considered.

MSAs – Proactive Preparation

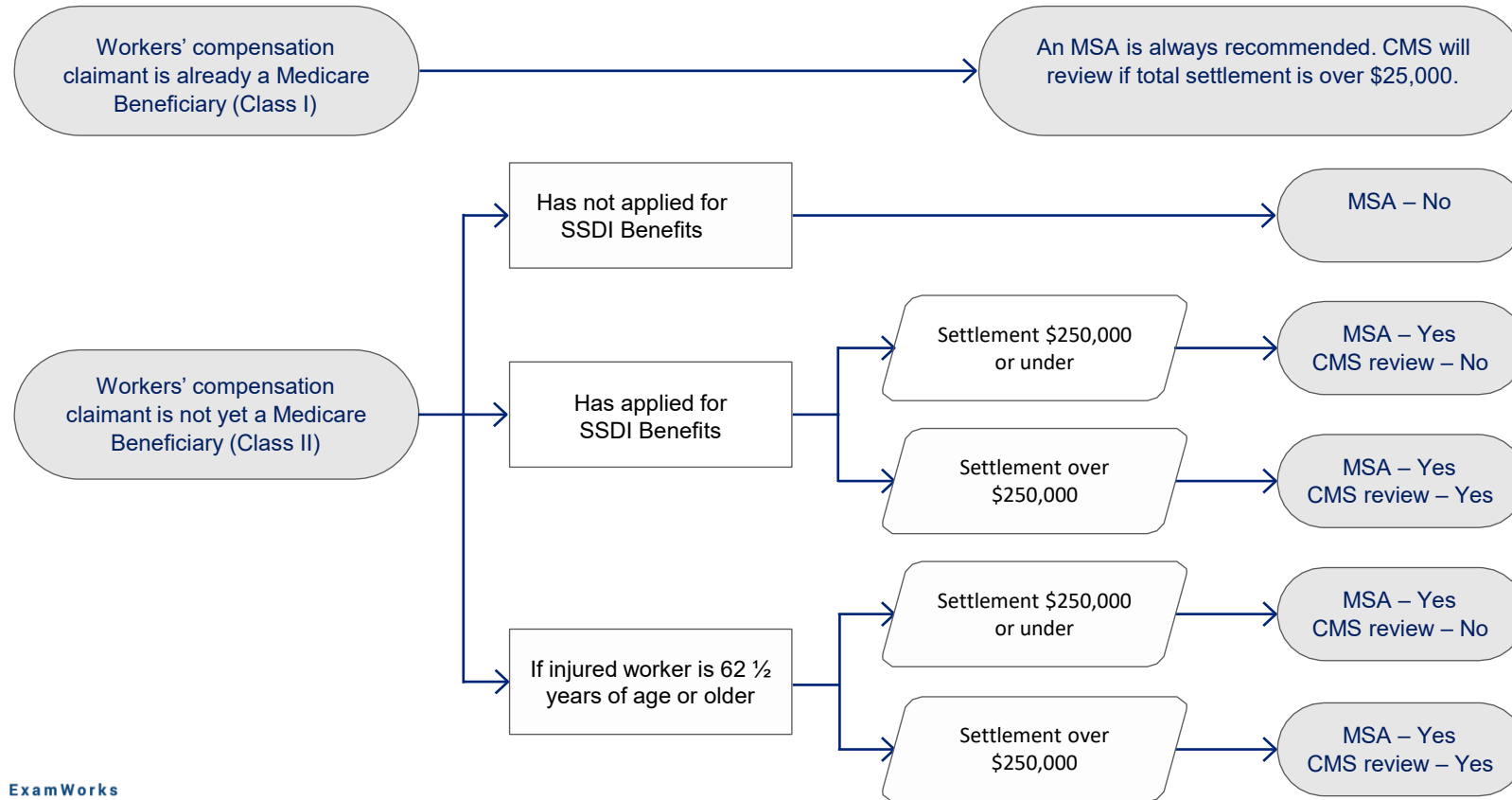


- When MMI is anticipated, are there issues that the MD will need to address?
 - You are more likely to get what you need at the last visit as opposed to a letter when the MD hasn't seen the patient in 3 months.
- Address medications
 - Are there medications that can be changed or officially discontinued? CMS will want to see a 6-month history of changes and documentation of items discontinued.
- Confirm Frequency of office visits, PT, diagnostics, etc.

MSA Quick Reference Guide



When is an MSA recommended? When will Centers for Medicare & Medicaid Services (CMS) review the MSA?



Documentation for a Smooth MSA Process



For MSA Preparation:

- Last 2 years of treatment
 - CMS may ask for last two years of treatment for each condition if records don't contain all conditions you are allocating for
 - May need personal treatment records if there is a significant gap in care over the last 2 years
- Last 2 years of payment records
- Last 2 years of medication pay records or pharmacy records

For CMS Submission:

- Proposed settlement amount - A final settlement number is not required but estimate should be over thresholds for submission.
- Current medical reports and medication history
 - If last 2 years of medical treatment has a gap in treatment, CMS will ask for personal treatment records to show what treatment has been pursued since last treatment related to injury
- Will MSA be lump sum or annuity? Self-administered or professionally administered?
- Signed release
- Court orders (if applicable)
- Attorney information – P and D

CMS Threshold for Review



- What is included in determining if the settlement threshold is met?
 - Total sum paid to injured worker (including indemnity + medical + other benefits)
 - MSA allocation
 - Attorney fees paid
 - Prior settlements/awards/judgments reported are factored into the total sum
 - Liens/conditional payments paid out of settlement
 - Third-party settlement amount, including the value of liens waived



Other Considerations for CMS Review



- When could CMS request personal medical records and pharmacy listings not related to the industrial injury?
- Jurisdictional considerations:
 - Example: GA 400 weeks – if this applies, ensure you request your MSA this way and provide documentation



Tips for Mitigating an MSA Prior to Submission



Things to Consider:

- *Is injured worker's treatment stable and plateauing or active and evolving?*
- While MMI/permanent and stationary is more a legal status, generally indicates an okay point to explore a MSA if considering settlement
- Frequency of care — CMS will mirror recent frequency over life expectancy

Big Ticket Items:

- Treatment discussed as option? CMS will likely include
- Examples: Spinal Cord Stimulator (SCS), pain pump, expensive DME
- Is there a definite or likely need for this treatment? If not, will treating doctor endorse treatment no longer recommended?
- When was treatment last recommended? If close to 2 years old, could try getting more recent records to get that specific treatment excluded from MSA as CMS only looks back 2 years on initial MSA submission

Tips for Mitigating an MSA Prior to Submission



Tapering/Explanation:

- CMS views tapering of treatment or medications as aspirational
- Tapering must be complete for CMS to reflect in MSA
- Same goes with explantation plans (i.e., removal of Spinal Cord Stimulator)

Medication Alternatives:

- Is injured worker on brand drugs? Will the doctor change them to generic?
- Lower-cost alternatives?

Evidence-Based MSAs



- ECS offers Evidence-Based Medicare Set-Asides (EBMSA) along with indemnification.
- Why EBMSA?
 - CMS approach is heavily skewed toward treating the provider and does not factor in medical guidelines or evidence-based support.
 - CMS assumes treatment will remain unchanged for life.
 - CMS includes treatment options that don't appear to be likely.
- EBMSA can present a more realistic option for likely future medical care.

Evidence-Based MSAs



- ECS offers indemnification on EBMSAs for an additional fee.
 - If CMS determines, after investigation, the EBMSA does not take Medicare's interest adequately into consideration, it could potentially require a spenddown of the entire settlement.
 - ECS will indemnify the difference between EBMSA and the total settlement value.
- EBMSA doesn't shift the burden to Medicare.

Indemnification



- Requirements for indemnification?
 - Must receive final (court-approved) settlement documents within 180 days of the EBMSA report with no change in treatment.
 - Claimant must be able to show MSA funds were appropriately spent on Medicare-covered items & funds exhausted.
 - Must utilize professional administration for MSA funds.
 - In specific situations, Zero-dollar MSAs may be indemnified. Consult ECS to discuss further.

THE Liability Burning Question



- Will We Have LMSAs?

- CMS withdrew an LMSA NPRM
- At present, we are aware of no plans to revise it.
- CMS *appears* to have shifted focus to WCMSAs in under \$25K settlements

- Will it Ever Change?

- CMS' *general* policy is that future medical money should be properly spent
- It's been 13 years since the "no future care memo"...the last substantive statement from the agency

Thank You



Any questions or comments?

Demystifying MSAs: Mastering Medicare Compliance & Cost Control



Join ExamWorks and SNCC for a 3-part webinar series designed to simplify Medicare Set-Asides (MSAs) and help you control costs while staying compliant. From foundational concepts to advanced strategies and upcoming Medicare changes, this series equips you with practical insights to improve settlement outcomes and reduce risk.

Part 1: Foundations of MSAs

March 3, 2026 | Time: 11:00 AM – 12:00 PM ET

[Register Here](#)

Part 2: Advanced MSA Strategies

April 7, 2026 | Time: 11:00 AM – 12:00 PM ET

[Register Here](#)

Part 3: What's Changing in Medicare

May 12, 2026 | Time: 11:00 AM – 11:45 AM ET


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This session is available for CRL WC Members and their TPAs.

Connect With Us




Virginia Stanley | SVP, Business Development

 virginia.stanley@examworkscpliance.com

 239-288-9363

Steve Peacock | AVP, Client Engagement

 stephen.peacock@safetynational.com

 314-692-9524

