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Foundations of Medicare Set-Asides

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Training Topics

- Mitigating MSAs Allocation Amount
  - Traditional MSA
  - EBMSA
- Mitigating MSA risk (iMSAs)
- Structured Settlements
- Professional Administration
- Reversionary interest

I got my MSA report. Now what?

- ***YOU DO NOT NEED TO USE THE FIRST MSA REPORT YOU GET***

Questions you should ask yourself:

- Is the MSA allocation acceptable for my settlement?
- Do I need to submit to CMS?
- Can I reduce this MSA allocation more?

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Tips for Mitigating a Traditional MSA

ECS/MSA vendor should offer mitigation opportunity recommendations:

- Can frequency of treatment/office visits be reduced?
  - Is frequency actual pattern or what provider noted in record?
  - Example: Dr. X is seeing patient twice a year, but notes "follow up in one month" each visit. CMS will allocate 12 x per year even though actual pattern is 2 per year.
  - How to reduce? Dr. X either needs to document (on his letterhead) a different frequency or provide a statement of what future care he would recommend that would differ from medical records.

Treatment discussed, but patient not pursuing:

- **CMS WILL INCLUDE ALL TREATMENT DISCUSSED**
- Examples:
  - "A spinal cord stimulator was discussed, but patient not interested at this time." CMS' position is patient could change their mind and will for purposes of a MSA.
  - "We discussed conservative treatment, but total knee replacement surgery may be needed if there is no improvement." CMS again does not assume conservative treatment will be successful and will include surgery.
  - How to remove? To remove unlikely treatment, you will need treating provider to document "I am no longer recommending this treatment for the patient."

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Tips for Mitigating an MSA Prior to Submission

Medication regimen unclear:

- How do I get the Rx allocation reduced?
  - CMS looks at provider recommendations as well as actual Rx prescription history
  - If prescription regimen is unclear from the records, CMS will err on the side of including medications.
  - Example: Dr. Y includes a medication list that includes historical medications, some of which have been discontinued. CMS may include all medications noted.
  - How to reduce? Have Dr. Y clarify regimen, personal pharmacy records if insurer not paying for all Rx

Medication Alternatives:

- Getting a provider to switch from brand to generic can generate potentially massive savings.
- Dosage matters! Example:
  - Duloxetine 60mg = $1.16 per unit
  - Duloxetine 30mg = $6.22 per unit

Note: *If you get a Medicare Set-Aside, you are not required to submit it. Can identify cost mitigation opportunities and set yourself up for a better CMS submission.*

I’ve identified mitigation - how do I get it done?

- Is provider willing to cooperate?
  - Challenge – provider has obligation to patient, not insurer/TPA.
  - Solution – partner with injured worker and their counsel to get doctor to cooperate.
- Utilize professional mitigation services
  - Insurers/TPAs sometimes have internal resources to assist.
  - ECS offers services (peer-to-peer, clinician reach out, analysis)

Re-Review

- Re-review = appeal based on CMS error.
  - Appeal based on:
    - 1) CMS math error
    - 2) Missing documentation (documentation not previously considered by CMS and date of which pre-dates the MSA submission)
      - Disagreement on inclusion or exclusion of certain treatment will not be entertained by CMS on this type of appeal.
    - 3) Submission error = error exists in documentation provided for submission that will lead to $2,500 or more in allocation difference.
      - Amended documents must have notation indicating error corrected and have wet signature of correcting individual.
- Re-review limited to one resubmission by error type

Amended Review

- One time request for to re-submit MSA to CMS
  - Must provide **all** medical records since the previous MSA submission.
  - Last six months of pharmacy records
  - Summary of expected future care
  - Consent to release
- Case must not have settled already
- Projected care change must result in 10% or $10,000 change (whichever greater)
- Approval of new generic version of a medication does not constitute a reason for an amended review.

Evidence-Based MSAs

- **Appropriate if parties do not require submission to CMS for approval**
  - No requirement to submit MSA to CMS
- ECS offers Clinical MSAs/Evidence-Based Medicare Set-Asides (EBMSA) along with indemnification.
- Safety National's preference is to use clinical MSAs when possible

Evidence-Based MSAs

- 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.
  - **CMS assumes worst case scenario, and allocates as such**
- EBMSA can present a more realistic option for likely future medical care.

EBMSA approach

- Mitigation steps are to persuade CMS to reduce allocation, whereas EBMSA makes rationale assumptions about future care.
- EBMSA instead looks at how likely it is that treatment will be needed.
- EBMSA does not assume care will be unchanged for the claimant's life.
- EBMSAs don't shift burden to Medicare.

Indemnified MSAs (iMSA)

- ECS offers indemnification on EBMSA & traditional MSAs 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.
- CMS does not accept $0 MSA submissions any longer, will ECS indemnify my $0 MSA?
  - **Yes!** As long as the $0 MSA meets the CMS criteria outlined in the WCMSA Reference Guide
  - ECS will indemnify up to $250,000.

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Structured Settlement/Annuity

- What is a structured settlement?
  - Legal settlement with structured payout. Example: Chronovo
  - Using rated age, annuity is funded up front for less money based on present day value.
  - **Ensures money will be there for claimant through intended life expectancy**
  - Effective tool for settlement as MSA total allocation can be reduced as to what Safety National actually pays.

Structured Settlement/Annuity

Annuity Funding (no rated age)

- The ECS total cost for the MSA is $812,053.18.
- **The Annuity Company cost to FUND the MSA is only $354,628.91.**
- That represents an **immediate savings to the file of $457,424.28.**
- By taking an initial lump sum of cash for the first two years of expenses, and then stretching out the rest annually, insurers can save a significant amount.

Professional Administration

- What is professional administration?
  - Third party that essentially performs all functions of stewarding MSA funds. Example: Ametros
  - Establish bank account for funds on behalf of IW
  - Receives medical bills, provides reductions to appropriate
  - Complies with CMS requirements

Reversionary Interest

- What is a reversionary interest?
  - Upon claimant's death, direction as to where remaining funds go.
  - **Important settlement tool – can ensure some or all remaining MSA funds can return to the insurer.**
  - **Associated with annuity & professional administration**
    - These companies can assist with incorporating language into settlement.

Case Studies

- Mr. Smith – Rated Age 71; Medicare beneficiary, traumatic brain injury.
  - Provider prescribing Nurtec ODT for migraines ($464,515.20)
- Clinical outreach resulted in changing medication from Nurtec to sumatriptan for migraines (**saved $462,133.80**).

Case Studies

- Ms. Anderson – Rated Age 63; Medicare beneficiary, low back injury. In pain management following failed fusion surgery + revision surgery.
  - Pain management provider discussed spinal cord stimulator, which patient did not know if she wanted to pursue.
  - Pain management had been trying radiofrequency ablation, medial branch nerve blocks, epidural steroid injections, facet block injections.
- At our direction, adjuster secured documentation from the provider, on his letterhead, indicating he was no longer recommending a SCS and future care should include occasional epidural injections. No other interventional pain management recommended at this time. **Reduced MSA $227,583.44**

Case Studies

- Ms. Johnson – Rated Age 75; Medicare beneficiary, right knee injury.
  - Total right knee replacement discussed, but Ms. Johnson did not wish to pursue.
  - No current treatment records as Ms. Johnson had not treated in over a year.
- Completed Clinical MSA with indemnification for client.
- Difference between clinical MSA and traditional MSA was $57,837.45.
  - If file had been submitted to CMS, very likely would have been put in development and greatly delaying settlement.
  - Parties got a MSA that made settlement an option as opposed to traditional MSA that would've included treatment the injured worker was not going to pursue.

Thank You

Any questions or comments?

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Part 3: What's Changing in Medicare

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

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

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