



Government Affairs Alert

May 20, 2011

CMS Issues Memorandum Reiterating WCMSA Voluntary Review Thresholds

The Centers for Medicare and Medicaid Services (CMS) recently issued a Memorandum dated May 11, 2011 confirming there are **no statutory or regulatory provisions requiring a Workers' Compensation Medicare Set-Aside (WCMSA) to be submitted to CMS for review**. Submission of a WCMSA proposal to CMS for review and approval is a voluntary process which is recommended by CMS, but not required. This statement in writing by CMS should eliminate any confusion in the industry surrounding this issue which is important in light of proposed state workers' compensation legislation enacting requirements that require submission of WCMSAs to CMS for review and approval if the CMS review threshold is met (Maryland and Kentucky).

If the WCMSA review process is utilized, CMS requests compliance with their established policies and procedures. The industry is encouraged to regularly monitor CMS' dedicated workers' compensation website for changes in policies/procedures. (<http://www.cms.gov/WorkersCompAgencyServices/>)

Below is a summary of important information contained in the Memorandum which *clarifies* CMS' current policy and procedure regarding review of WCMSAs.

1. A WCMSA should **not** be submitted to CMS when resolution of the workers' compensation claim results in the medical portion of claim is being left open.
2. CMS will review a WCMSA when either of the following thresholds are met:
 - Claimant is currently a **Medicare beneficiary** and total settlement amount is **greater than \$25,000**
 - Claimant has a "reasonable expectation" of Medicare enrollment **within 30 months of settlement date and** anticipated total settlement amount for future medical expenses and disability/lost wages over life or duration of the settlement agreement is expected to be **greater than \$250,000**
3. CMS no longer reviews new WCMSA proposals if the above thresholds are not met. However, these threshold requirements reflect a CMS operational workload standard and do not constitute a substantive dollar or "safe harbor" threshold. CMS confirmed that Medicare beneficiaries still must consider Medicare's interests in all workers' compensation cases and ensure Medicare is secondary payer.
4. Both the beneficiary and non-beneficiary review thresholds noted above are subject to change and CMS reserves the right to modify or eliminate these thresholds.

[Click here](#) to review the CMS Alert in its entirety.



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