



MEDICARE THRESHOLDS, INTERESTS AND SET ASIDES

Presented by
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I. New Memorandums

A. 7/11/05 MEMORANDUM

1. Must always take Medicare's interests into account
2. CMS will not review settlements that are less than \$25,000 (amended 4/25/06)
3. Parties can proceed with state approval of workers' compensation settlement before seeking Medicare approval

B. 12/30/05 MEMORANDUM

1. All Worker's Compensation settlements that occur on or after 1/1/06, must consider and protect Medicare's interests when future treatment includes prescription drugs along with the future medical services that would otherwise be reimbursable by Medicare

C. 4/25/06 MEMORANDUM

1. Increased review threshold to \$25,000 on cases where claimant is on Medicare at the time of settlement.

D. 7/24/06 MEMORANDUM

1. In cases which “settled” after 1/1/06, the submitter must include separate amounts for future medical treatment and future prescription drug treatment in the cover letter.
2. In structured proposals, must indicate if any portion of the initial seed money is attributable to future prescriptions.

D. 7/24/06 MEMORANDUM Continued

3. If case “settled” prior to 1/1/06, the claimant cannot use the MSA funds to pay for prescription drugs. Claimant must exhaust other settlement funds before billing Medicare.
4. If claimant has not enrolled in Part D plan for prescription drugs you must still submit an amount for future drug prescriptions.

D. 7/24/06 MEMORANDUM Continued

5. The total amount of the MSA must be deposited in an interest bearing account (medical treatment and prescription medications). The annual accounting must separate amounts spent for treatments and medications.

D. 7/24/06 MEMORANDUM Continued

6. All amounts for future medical are included in the settlement to determine review threshold.
7. At this point, CMS will not independently price for future prescription treatment.

II. REVIEW THRESHOLDS FOR CMS

A. Purpose of Review Thresholds

1. Reduce workload of CMS – not you
2. Per 7/11/05 Memo, you must always take into account Medicare's interests, whether or not settlement reaches CMS review thresholds

B. Review Thresholds

1. Is the claimant currently a Medicare beneficiary?
 - (a). If yes, then you must seek CMS approval on all cases where the settlement amount exceeds \$25,000 (4/25/06 Memo)

B. Review Thresholds Continued

- (b). \$25,000 threshold includes future medical and indemnity but does not include past payments (except reimbursement of Medicare conditional payments)
- (c). Even if you do not meet this threshold you must still take into account Medicare's interests (7/11/05 Memo)

B. Review Thresholds Continued

2. What does it mean – you must take into account Medicare's interests when you are below review threshold

(a). 7/11/05 does not give much guidance

B. Review Thresholds Continued

- (b). Suggest that if there is a reasonable basis to assume that there will be future medical care, including prescription medication, obtain vendor opinion on Medicare exposure
 - (1). Include amount in settlement designated future medical and use language for self-administered set aside

B. Review Thresholds Continued

- (2). If no reasonable basis for future medical care, have medical documentation to that effect and consider settlement language to address issue.

B. Review Thresholds Continued

3. If the claimant is currently not a Medicare beneficiary, does the claimant have a reasonable expectation of being on Medicare within 30 months of the date of settlement?

B. Review Thresholds Continued

- (a). If the answer is yes, then ask if the total amount of the settlement exceeds \$250,000 – including all future medical and indemnity (must use uncommuted value)
 - (1). If the answer again is yes, then must seek CMS approval

B. Review Thresholds Continued

- (b). If the answers are no, you must still take into account Medicare's interests – even without review from CMS
 - (1). Same process- seek vendor opinion and include amount in settlement with self-administered language.

B. Review Thresholds Continued

- (c). Under 7/11/05 memo, must take into account Medicare's interests in all cases.
 - (1). Maintain medical documentation that no further medical care is anticipated.

III. PROCESS AND PROCEDURE

A. If meet CMS threshold review criteria

1. Reach settlement agreement in workers' compensation claim
 - (a). Per 7/11/05 memo, you can seek CMS approval before or after state has approved settlement
 - (b). If obtain state approval before CMS approval, amount stated for future medical is not binding on CMS until CMS has approved (they can raise, lower or agree with amount stated)

A. If meet CMS threshold review criteria – Con't.

- (c). Strategy – seeking state approval v. CMS approval first
 - (1). Facts of the case and interests of the parties dictate decision
 - (2). State approval first –
 - i. Need closure on WC case immediately
 - ii. Risk- do not have certainty on CMS amount
 - (3). CMS approval first
 - i. Greater certainty on overall exposure

A. If meet CMS threshold review criteria – Con't.

2. Propose set-aside amount v. request for \$0 set aside (waiver)

(a). \$0 set-aside (waiver)

- (1). Must meet CMS review threshold criteria
- (2). Consider in any case where:
 - i. All medical in dispute and none paid under WC
 - ii. Some cases where major dispute on current medical

A. If meet CMS threshold review criteria – Con't.

(b). Set-aside proposal

- (1). Obtain vendor proposal
- (2). In cases submitted after 1/1/06
 - must include separate amounts for
 - i. Future medical treatment, and
 - ii. Future prescription drug treatment
 - In addition, cover letter must include an explanation as to how prescription amounts were calculated (i.e., actual costs, average wholesale prices, etc.)

A. If meet CMS threshold review criteria – Con't.

- (c). In cases submitted after 1/1/07 – in addition to the above requirements, submission must include a payment history of prescription drugs paid by WC carrier, as follows:
 - (1). If injury occurred less than 2 years from submission date, payment history should include all payments
 - (2). If injury occurred more than 2 years from date of submission, payment history should include last 2 years

A. If meet CMS threshold review criteria – Con't.

- ✓ If payment history not included or no payments in last 2 years, CMS will independently price Medicare-covered prescription drugs using CMS information available from current Medicare Part D data
- ✓ Typically in all submissions, helpful to submit medical pay info for last 2 years

A. If meet CMS threshold review criteria – Con't.

3. Self-administered v. vendor-administered set-aside

- (a). Most cases self-administered preferred and accepted by CMS
- (b). Consider vendor-administered when –
 - (1). Catastrophic injuries
 - (2). On notice claimant not capable of managing funds

A. If meet CMS threshold review criteria – Con't.

4. Submission contact information

- (a). All proposals submitted to:
CMS
c/o Coordination of Benefits Contractor
P.O. Box 660
New York, NY 10274-0660
Attn: WCSA Proposal
- (b). Once acknowledgement letter received
contact CMS vendor to determine if there
are any existing liens or conditional
payments

- (1). New national contractor for existing lien information as of 10/2/06.
 - a) On WC cases:
MSPRC WC
PO Box 33831
Detroit, MI 48232-3831
 - b) On Auto/Liability cases
MSPRC Auto/Liability
PO Box 33828
Detroit, MI 48232-3828
 - c) Phone Contact (866) 677-7220
 - d) Website – www.cms.hhs.gov/MSPGenInfo

A. If meet CMS threshold review criteria – Con't.

- (c). Proposal should include detailed information about the injury, parties, medical documentation, proposed set-aside amount and current Medicare eligibility

***IV. MISCELLANEOUS PROVISIONS
UNDER NEW CMS MEMORANDUMS***

A. 7/11/05 MEMO

1. CMS review thresholds can change at any time
2. In CMS approved set-asides, claimants can use money for covered expenses before they are actual Medicare beneficiaries
 - (a). Claimant must file self-attestation document or full accounting
3. MSA is still appropriate even if claimant still has group, managed care or VA coverage
4. If claimant later loses Medicare entitlement, claimant cannot release MSA funds

A. 7/11/05 MEMO Continued

5. Claimant can request termination of MSA account if:
 - (a). Treating doctor has concluded the claimant's medical condition has substantially improved, and
 - (b). The proposal justifies at least a 25% reduction in outstanding funds, and
 - (c). At least 5 years has passed since previous CMS approval letter
6. CMS will not compromise or reduce future medical expenses – appears to eliminate percentage method

A. 7/11/05 MEMO Continued

7. No rights to appeal CMS determination, but there are options:
 - (a). Contact Regional office for clarification
 - (b). If CMS determination contains obvious mistakes, can contact Regional office for correction of errors
 - (c). Submit additional evidence and request reevaluation

A. 7/11/05 MEMO Continued

8. MSA's are not subject to any special treatment under Medicaid resource rules.

9. CMS will recognize or honor any non-compensable medical services as determined by state-specific statutes.

B. 12/30/05 Memo

1. Claimants do not have to resubmit MSA proposal, if a proposal was already approved by CMS prior to 1/1/06
 - BUT claimant must exhaust money designated in WC settlement for prescription medication before billing Medicare prescription drug costs incurred on or after 1/1/06. Claimant does not have to transfer funds into MSA or include them in annual accounting.

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