



MEDICARE SET-ASIDE

Q&A

Q: What is an MSA?

A: A Medicare Set-Aside (MSA) is a carve-out from the global settlement specifically intended for 1) injury-related and 2) Medicare-allowable expenses. These accounts are used post-settlement as the primary payer source for allowable expenses so that the Medicare trust fund is protected as secondary payer.

Q: Why is an MSA Needed?

A: The 1980 Federal Medicare Secondary Payer (MSP) Statute says that Medicare cannot make a payment for an expense when there are other funds available. In our industry, the other available funds are the settlement proceeds. The intent of this statute is to preserve the Medicare trust fund from solvency problems. This statute intends to prevent "double-dipping", meaning that if a claimant/applicant receives a settlement that compensates for future medical care, some of those funds must be used instead of directly billing Medicare.

Q: Are MSAs mandatory?

A: No. MSAs are simply a compliance tool, a means to an end. Compliance with the MSP Statute is mandatory. If you don't do some form of an MSA how will the settling parties comply with the MSP statute?

Q: When do I consider doing an MSA?

A: The two most common times to consider a MSA are:

- The individual is at least 62.5 yrs old.
- The individual is eligible for SSDI (not to be confused with SSI) benefits.

Keep in mind there are special circumstances when an individual can receive access to Medicare and an MSA should be considered. Some examples are end stage renal disease or Lou Gehrig's disease (ALS). The best practice is to conduct an inquiry of government benefit(s) eligibility. Medivest can produce this inquiry on behalf of your client.

Q: When do I submit the MSA for CMS approval?

A: First, CMS submission is 100% voluntary. This is memorialized in a 2011 CMS Memo. Second, this is a big area of difference for workers' compensation claims versus liability lawsuits. For workers' compensation claims you are eligible to participate in the submission process under two conditions. The first is if the individual is currently on Medicare and the global settlement is at least \$25,000 or more. The second is if the individual is not yet on Medicare and the global settlement is at least \$250,000 or more. For liability lawsuits we strongly advise to refrain from CMS submission altogether.

Contact us Today

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