

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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OFM/FSG/DMSPPPO

DATE: October 15, 2004

TO: All Regional Administrators

FROM: Director
Financial Services Group
Office of Financial Management

SUBJECT: Medicare Secondary Payer (MSP) -- Workers' Compensation (WC)
Additional Frequently Asked Questions:

- 1) Use of WC Fee Schedule vs. Full Actual Charges for WC Medicare Set-aside Arrangement (WCMSA);
- 2) Self-administration of a WCMSA;
- 3) Up-front Settlement of Future Medicals vs. WCMSA;
- 4) Inflation Adjustment/Discount to Present Value;
- 5) Structured WCMSAs;
- 6) WC Claim Resolution Where Medicals Remain Open.

The above-referenced issues are addressed below. This memorandum will be posted on the Centers for Medicare & Medicaid Services (CMS) Coordination of Benefits website.

Q1. Use of WC Fee Schedule vs. Actual Charges for WC Medicare Set-aside Arrangement – What is CMS's policy with respect to reviewing WC Medicare Set-aside Arrangement proposals using either WC fee schedule amounts or full actual charges as the basis for the proposal?

A1. Effective with the issuance of this memorandum, CMS will use either the WC fee schedule (for states that have such schedules) or full actual charges for its review of a proposed WC Medicare Set-aside Arrangement based upon whichever methodology was used by the individual/entity submitting the proposal. The administrator of the WC Medicare Set-aside Arrangement (both professional administrators and self-administrators) should make payments from the WC Medicare Set-aside Arrangement on the same basis. That is, if the proposal was submitted and approved based upon full actual charges, the administrator should make payment from the WC Medicare Set-aside Arrangement based upon full actual charges; if the proposal was submitted and approved

based upon WC fee schedule amounts, the administrator should make payment from the WC Medicare Set-aside Arrangement based upon WC fee schedule amounts.

Note: The above answer replaces Question Number Nine on the July 23, 2001 ARA Memorandum.

Q2. Self-administration of a WC Medicare Set-aside Arrangement – If an individual has a designated representative payee for Social Security purposes pursuant to 20 C.F.R. 404.2010 and 404.2015 (e.g., because the individual is legally incompetent, mentally incapable of managing benefit payments, etc.), has an appointed guardian/conservator, or has otherwise been declared incompetent by a court, may that individual self-administer his/her Medicare set-aside arrangement?

A2. WC Medicare Set-aside Arrangements must be administered by a competent administrator (the representative payee, a professional administrator, etc.). Moreover, when an individual does (in fact) have a designated representative payee, appointed guardian/conservator, or has otherwise been declared incompetent by a court; the settling parties must include that information in their Medicare set-aside arrangement proposal to CMS.

Q3. Up-front Settlement of Future Medicals vs. WC Medicare Set-aside Arrangement – May Medicare accept an up-front cash settlement for future medicals directly from the settling parties instead of a WC Medicare Set-aside Arrangement?

A3. CMS currently has no process to accept up-front cash payments in lieu of a CMS-approved WC Medicare Set-aside Arrangement.

Q4. Inflation Adjustment/Discount for Present Value/Change in Policy – Must the WC Medicare Set-aside Arrangement include an upward adjustment for inflation? May the WC Medicare Set-aside Arrangement include a downward adjustment as a discount for the present-day value of the total WC Medicare Set-aside Arrangement?

A4. Effective with the issuance of this memorandum, CMS’s position is that the WC Medicare Set-aside Arrangement does not need to be indexed for inflation and may not be discounted to present-day value.

Note: This answer replaces Question Number Seven in the July 23, 2001 ARA Memorandum.

Q5. Can a WC Medicare Set-aside Arrangement be established as a structured arrangement, where payments are made to the arrangement on a defined schedule to cover expenses projected for future years?

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A5. Yes. However, CMS will approve a payout amount for services that would otherwise be reimbursable by Medicare from the WC Medicare Set-aside Arrangement in the following manner:

- The seed money for the WC Medicare Set-aside Arrangement must include an amount equal to the amount of monies calculated to cover the first surgery procedure and/or replacement and two years of annual payments.
- The remainder of the approved amount should be divided by the remainder of the claimant’s life expectancy (or a shorter defined period of time if CMS has agreed to a shorter time period).
- Subsequent annual deposits into the WC Medicare Set-aside Arrangement are to be based upon a set “anniversary date” which cannot be more than one year after the settlement date.

Note: This answer is intended to provide clarification of Question Number Ten in the April 21, 2003 ARA Memorandum and FAQ #1903.

Q6. WC Claim Resolution Where Medicals Remain Open – Is a WC Medicare Set-aside Arrangement appropriate when resolution of the WC claim leaves the medical aspects of the claim open?

A6. No. However, a WC Medicare Set-aside Arrangement is appropriate where the resolution of the WC claim permanently closes the medical aspects of the claim, and the claimant will require future medical services related to the WC claim that Medicare would otherwise reimburse.

Please direct questions or concerns to Eve Fisher at (410) 786-5641.

/s/
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