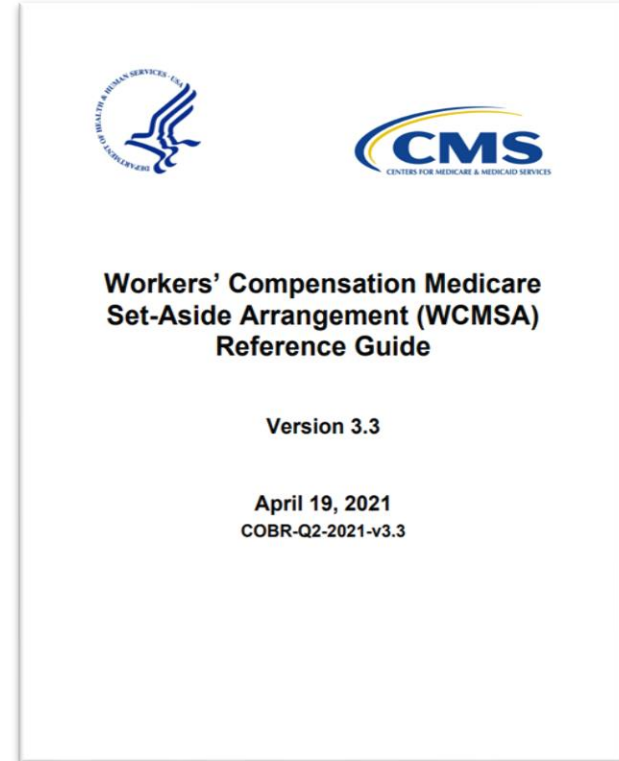
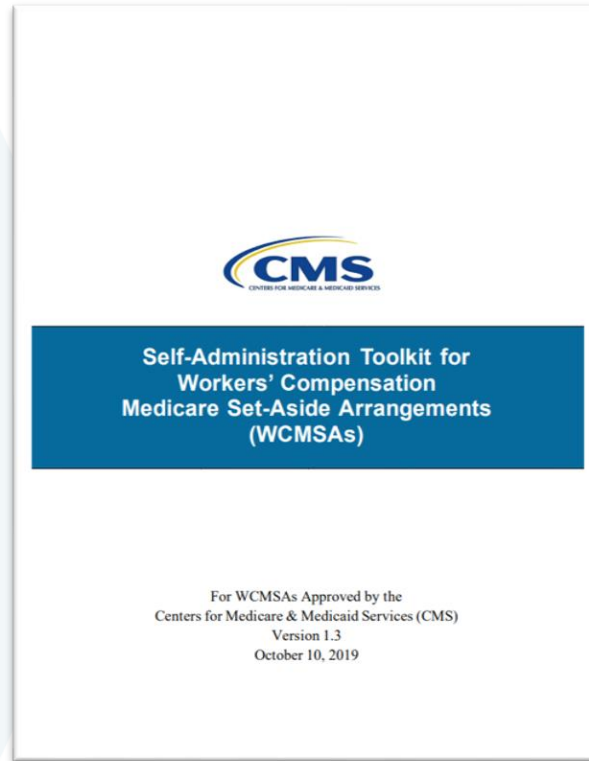
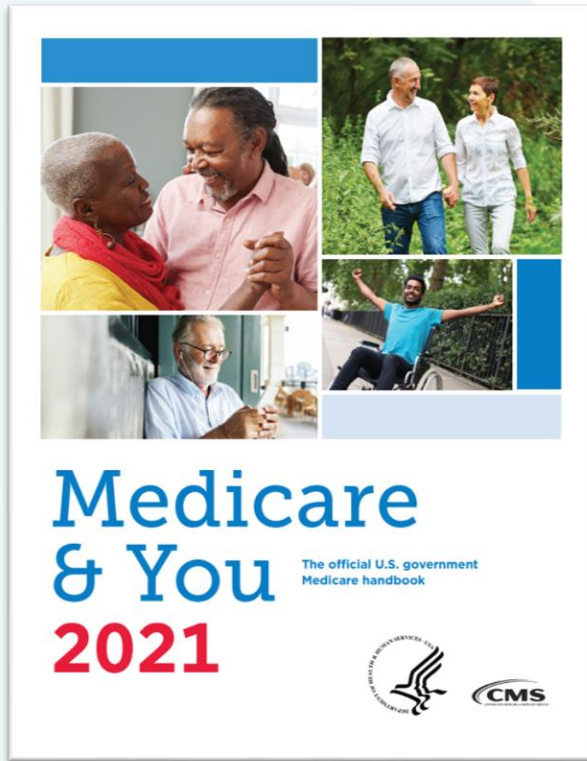


Medicare Set Asides – This is What We Think You Should Know

Paul H. Sighinolfi, Esq.

**Medicare is a
Secondary Payor**

Helpful Resources



- Section 111 filings provide CMS with your detailed settlement information

Medicare Secondary Payer Statute



- Created by the Omnibus Reconciliation Act of 1980 and enacted by Congress in 1981
- Enacted to reduce spending and preserve the fiscal integrity of the Medicare program
- Statute 42 U.S.C. § 1395y

CMS Will Review in Two Situations



1. The claimant is on Medicare at the time of settlement AND the settlement is \$25,000 or greater, or;
 2. The claimant has a “reasonable expectation” of becoming a Medicare beneficiary within 30 months of the date of settlement AND the settlement is \$250,000. or greater.
- These are “work load review thresholds” § 8.1 of Reference Guide
 - Some recommend non-submitting

Because Medicare is a secondary payer, if a claim is settled you must take Medicare's interests into consideration if the settling party is or will become Medicare eligible

- A Medicare Set-Aside Arrangement (MSA) is the government's defined method to protect "Medicare's Interest"
- Be proactive-address cost drivers
- MSAs are not mentioned in the MSP Statute
- CMS can refuse payment post settlement if the burden is "shifted" onto Medicare up to the entire settlement

Questions We've Received From the Injured

"I got hurt on the job a few years back and had to set up an account. I didn't know what to do so I have never touched it. Is there someone who can go over my file and see if I can take some of the money out without being penalized?"

"I will be receiving a workman's comp settlement I am on Medicare and SSD. Will all of the settlement money go into an account? Will I will be able to use this money for anything else such as housing or to fix my car? What will happen if I do use it for something else? Please advise. No one has told me anything. "

"I have a Medicare Set Aside check and need to establish an interest bearing checking account for it, do I do this?"

"I have an MSA from a workers comp case. I was on SSD and they stopped making payments. My understanding is that it is for Medicare payments, they are requesting legal documentation. Can you assist me?"



Is CMS Paying Attention?



CMS is Running Out of Money



Medicare Part A (hospital care) is expected to run out of money by 2024, five years earlier than projected in 2017.

This is What We Know: Medicare Is Getting Savvier



There was a **51%** increase in phone calls from Medicare this year.

Medicare inquires on **100%** of lump sum exhaustions

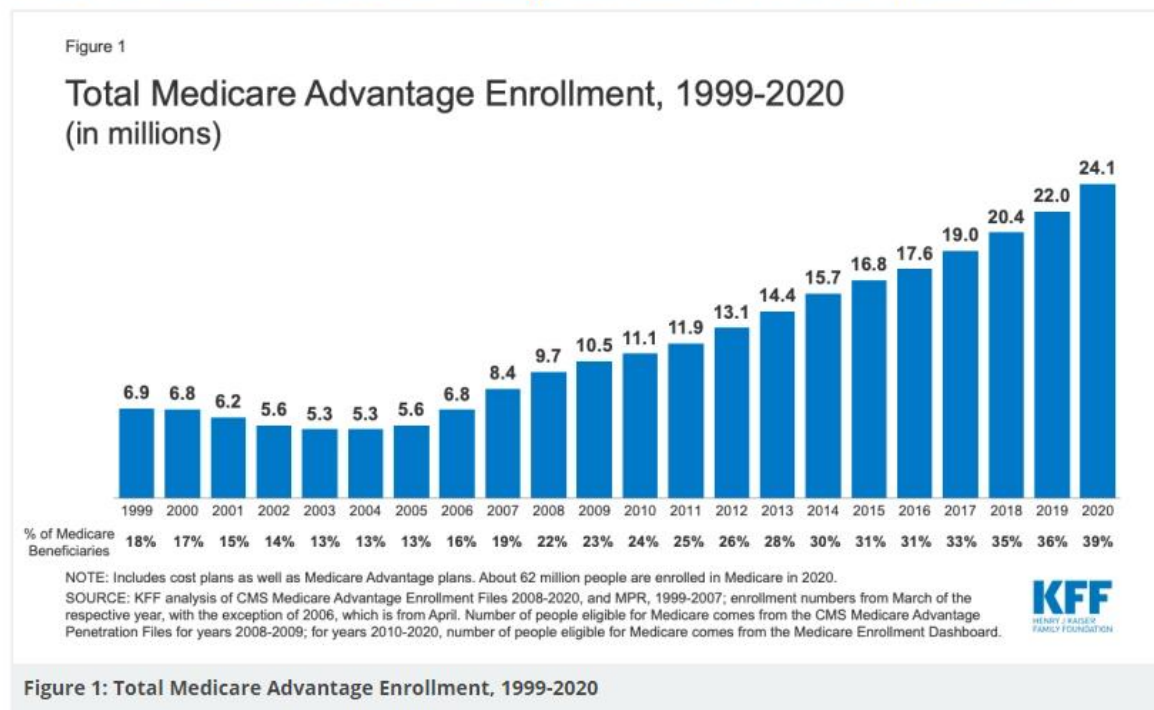


Medicare to checks in on **1 out of 3** structured settlement exhaustions

Medicare Advantage Plans

- 39% of people on Medicare have Medicare Advantage plans
- Creating MSP Subrogation units
- Private plans are active when it comes to recovery

1. Enrollment in Medicare Advantage has doubled over the past decade

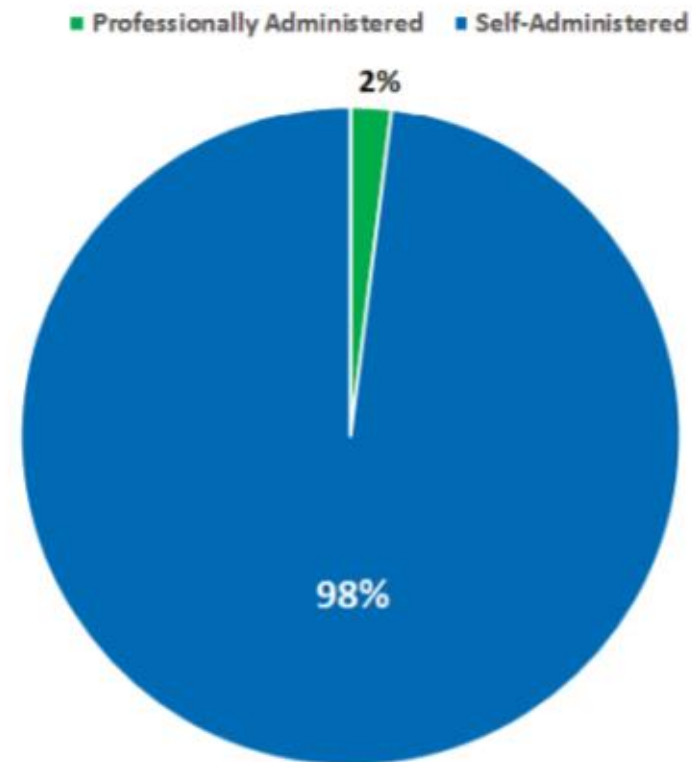


NCCI Report

- 11,500 MSAs in the sample size (2010-2015)
- 11,270 were self administered
- 230 were professionally administered

Almost All MSAs Are Self-Administered

Distribution of MSAs by Administration Type



MSA Requirements

1. Money must be put into a separate interest bearing bank account
2. Funds can only be used for treatment related to the injury
3. Funds can only be used for Medicare-covered expenses
4. Bills must be paid consistent with the appropriate state's fee schedule
5. Someone must prepare & submit annual reporting to CMS
6. Someone must maintain line item detail for duration of eligibility



What Are These?

- Dental
- CBD /marijuana
- Eyeglasses
- Chairlift
- Wheelchair motor vehicle left
- Compression stockings
- Gloves
- Hot tub
- Massage therapy
- Home health care aides
- Incontinent supplies /gloves
- Orthotic shoes

In addition, our clients have shared the following observations with our staff:

- Everything that was paid by the workers compensation carrier will be paid by your MSA
- All bills paid with your MSA are paid at a Medicare rates
- Your MSA pays all the co-pays and Medicare pays the balance on every bill
- Medicare receives the money and once it is exhausted then Medicare pays expenses associated with your injury
- If you do not use your MSA funds in five years you can spend them on whatever you want

Medicare compliance is only one component of professional administration and the support injured workers need post-settlement



Support &
Advocacy



Care
Coordinators



Technology



Savings



Resources

New Entry in WCMSA Reference Guide

- CMS published a new version of the Reference guide in April 2021
- **4.1.3 Other Health Coverage**

“A WCMSA is still recommended when you have coverage through other private health insurance, the Veterans Administration, or Medicare Advantage (Part C). Other coverage could be cancelled or you could elect not to use such a plan. A WCMSA is primary to Medicare Advantage and must be exhausted before using Part C benefits on your WC illness or injury.”
- What does this say about the scope of CMS' concern?

Liability Medicare Set Asides Process May be on the Horizon



- CMS is enhancing its ability to prevent, monitor and recover payments on all lines of business; in the past few years, it has focused on initiatives focused on settlement
- As noted earlier, no formal review process for liability settlements has been developed
- It is assumed a review process for Liability Medicare Set Asides (LMSAs) is coming, start setting your clients and program up for success with professional administration
- Latest expected release date March 2021 (and what happened?)
 - “This proposed rule would ensure that beneficiaries are making the best health care choices possible by providing them and their representatives with the opportunity to select an option for meeting future medical obligations that fits their individual circumstances, while also protecting the Medicare Trust Fund.”

Put Yourself in the Most Defensible Position



- Settling parties' responsibilities under the MSP Act are to protect Medicare's interests
- Liability settlement funds are considered a primary payer
- Ensure settlement proceeds are properly depleted before Medicare assumes the role as primary payer with a professional administrator
- Reduce potential collateral exposure due to potential mismanagement of post-settlement medical funds

Do Right by Your Client



- In the CMS notice of proposed rulemaking released Spring 2020, the onus of protecting Medicare's interest would be shifted to the injured
 - "an individual or Medicare beneficiary must satisfy Medicare's interest with respect to future medical items and services related to such settlements, judgments, awards, or other payments"
- Ensure the injured has the resources and support needed to satisfy Medicare's interest
- Simplify Billing and Treatments – Make sure the right treatment is paid for with the right funds
- Support – For example, our administrative team provides the injured with 24/7 support coordinating their care

What's Going on with MSAs



Evidence-Based MSAs

- Being used as an alternative to submitted MSAs
- Calculated using information and pricing from actual prescription and medical data to reflect post-settlement pricing
- EBMSAs are not submitted to CMS, but with professional administration there is an added protection to ensure the funds are spent correctly and last as long as possible

A M E T R O S



Thank You!

Paul Sighinolfi, Esq. | psighinolfi@ametros.com | 207.632.7047