

MSA's – Insurance Discussion



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MSA Handling

- Watch out for the trap of complacency.
- Why are we doing this? Is it right? Is it compliant with the law and ethical?
- Do you have an understanding of the MSA obligations and how it is increasing your claim dollars (reserves & handling fees) in case your boss or management committee inquires?
- Good things happen by plan rather than by mistake. Have a playbook to cover your MSA obligations. It should be part of your risk management manual. Some basics to consider:
 - Who is the RRE in your situation?
 - How is data being pushed to CMS?
 - Confirm that your carrier/TPA has an MSA vendor arranged for your account
 - On every claim that might fall into the purview of CMS, ask your adjuster if the MSA was considered.

Claim Management of the MSA Process

- Get the appropriate medical guidance on how long the prescription should be written and at what dose level. Have the treating physician confirm same. This will help cap the future pharmaceutical obligation.
- A sign of a good MSA vendor is one who recommends drug utilization review. Run from vendors who never challenge this.
- Self insured's should have a couple of firms as their "go to" vendor for MSA review. Eventually that will lead to having one primary and one back up firm. Governmental and municipal entities who are self insured will likely need to issue an RFP for one vendor.
- Review the Conditional Payment Ledger issued by Medicare. It will probably contain unrelated bills for care. Those should be challenged for removal. Only the claimant can appeal these. Carriers/TPA's have no appeal rights.

CMS Considerations

- 2009- 1/6 of all Americans or 46.3M were Medicare eligible
- Treating physician medical reports are what they rely on. IME reports can be used in jurisdictions where they have equal footing with the treator.
- 98% of all MSA's are self administered by the claimant. We expect a marked increase of professional administrators to manage the MSA trust or at least train a claimant how to do it. Carriers will likely take the lead especially in cases where a claimant's injuries hamper them from self administration, e.g. head injury
- They do not consider the following for future medical:
 - Travel
 - Certain home care
 - Certain drugs , i.e. off label drugs
 - Acupuncture

Claim Handling – Workers' Compensation

- MSA's are not needed if the medical benefit remains open on the claim file
- Suggest you have your favorite annuity vendor attend one or two claim reviews per year. We have found that these representatives usually catch a handful of claims not identified by the claim adjusters for MSA referral.
- Co- morbidity information is critical for the annuity quote in order to get a "rated age" bid. Make sure your adjusters are collecting this medical information and sharing it in your claim reviews.
- Ask your carrier or TPA if an annuity can be purchased to satisfy a future medical payment obligation to save on your medical reserve silo.
- For workers' compensation, CMS has set these review thresholds:
 - The claimant is a medicare beneficiary at the time of settlement and the total settlement is greater than 25k;
 - The claimant is not a medicare beneficiary at the time of settlement but has a reasonable expectation of medicare enrollment of the settlement date and the settlement agreement is greater than 250k. Total settlement per CMS includes and but is not limited to wages, attorney fees, all future medical expense, pharmaceuticals, and repayment of any medicare conditional payments.

Claim Handling - Liability

- No dollar guidelines like the comp side of the house
- Watch out for and avoid doing any settlements wherein you agree to the Bodily Injury but leave open the MSA. You're leaving an open feature which is unquantified. Get the set aside indication as part of the evaluation process.
- 1st quarter of 2012 is when data has to be pushed to CMS. Claims as of 1/1/11 and going forward are to be reported
- Basic info that the RRE reports in electronic format include : claimant attorney information, claimant name, coverages on the loss, diagnostic codes (19 allowed), and date of loss
- If your claimant has the following, the claim probably needs MSA's interest considered:

A medicare beneficiary

Will become a medicare beneficiairy soon

Have they applied to Social Security? 24 months after SSI benefits start, the person gets Medicare benefits.

Do they have end stage renal disease? If so, they are fast tracked for SSI.

NY Update

- The U.S. Attorney's Office for the Western District of New York release a document for his district announcing a voluntary "Application for MSP compromise" process for review of certain liability MSA proposals. While this office does not speak for CMS or have jurisdiction over it, the fact of an additional body watching over the process gives all of us another reason to be certain of referring liability matters to CMS. Other similar offices may join the effort. Below is the advisory.
- **Western District of New York**
- **Medicare Secondary Payor Protocol**
- Application for Medicare Secondary Payor (MSP) compromise with regard to Medicare concerning future medical treatment must be made jointly by the Medicare beneficiary, or his representative, and the primary plan. Prior to any application filed with the U.S. Attorney's office for the Western District of New York (WDNY), Medicare must have been notified of the pending liability claim, the settlement of same and the letter from the Medicare Secondary Payor Regional Contractor (MSPRC) that the conditional payment obligation concerning repayment for historical medical items and services related to the tort was resolved or provide adequate assurance to that effect.
- The application for MSP compromise concerning payment for the future medical items and services related to the tort shall include:
 - 1. A copy of the MSPRC letter stating the matter concerning repayment for historical medical items and services related to the tort was reviewed and resolved or provide adequate assurance to that effect.
 - 2. Proposed Liability Medicare Set-aside Arrangement concerning payment for the future medical items and services related to the tort (LMSA)¹.
 - 3. An agreed copy of the settlement agreement subject to completion of the MSP obligations.
 - 4. A joint statement from the applicants that warrants the following:
 - a. The value of the agreed settlement equals or exceeds \$350,000.00.
 - b. The plaintiff is a Medicare beneficiary as that term is defined under 42 C.F.R. §400.202.
 - c. The Centers for Medicare and Medicaid Services (CMS) was requested to approve the LMSA, but no substantive response has been received for at least 60 days from the date of the letter to CMS; and
 - d. An affidavit from the preparer of the LMSA that it is true and correct based on the Medicare beneficiary's medical records and the injuries being released as well as in conformance with the WCMSA submission checklist as published by CMS. See <https://www.cms.gov/WorkersCompAgencyServices/Downloads/samplesubmission.pdf>.
- Subsequent to the application by the U.S. Attorney's Office for the WDNY, the U.S. Attorney may request additional information from the parties, including, but not limited to, a request for an additional LMSA(s), and upon receipt of all required information, issue a Release. The release issued by the U.S. Attorney's Office for the WDNY will compromise the LMSA obligations related to the settlement, judgment, award or other payment.
- *Exclusions: The WDNY MSP Protocol is not available for liability cases involving mass torts. This protocol confers no substantive rights and may be used or withdrawn at the unilateral discretion of the United States Attorney's Office of the Western District of New York. This is a voluntary process and not policy of the CMS.*

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Slide 7

i1 NY atty general issued this because the regional CMS office would not offer any guidance for liability settlements.

Basically offers help if:

350k value

Effort made to reach CMS

Have a set asdie completed

ikhan, 6/2/2011

Information Needed to Obtain/Request a Structured Settlement Quote

- Claimant name
- Claimant date of birth and gender (family members, as well – if possible)
- Date of Loss
- Venue of loss/accident
- Claim #
- Defense & Plaintiff attorney information
- Summary/details of case
- Medical impairment (copy of medical records)
- Benefit level(s) and/or cost level(s) for settlement quote
 - Current compensation rate (AWW, TTD)
 - Amount spent on medicals over the last 3 years
 - Is claimant receiving Social Security Disability Income (SSDI) and/or Medicare?

What Is a Structured Settlement?

Lump Sum v. Periodic Payments

- A settlement that compensates an injured party over time, versus a single lump sum cash payment
- Payments are scheduled to fit the financial needs of the claimant and can be paid for a fixed period of time or can be paid for life
- Payments can be equal in amounts or can vary
- Payments can also include deferred lump sums
- Settlement always includes up front cash to cover the next surgery or prosthesis plus 2 years of anticipated future medical costs

Structured Settlement Offers vs. Lump Sum Negotiation

- Using Periodic Payments in context of damages
- 'Jurisdictional value' versus 'needs assessment'
- Plaintiff does not want to negotiate using periodic payments
- Periodic payments are a tool to negotiate damages, offers reflect need, lump sums reflect more funds are available
- It does not matter if plaintiff ultimately 'structures' or not; offers in periodic payment format show reflection of defense evaluation of damages

Structured Settlement Funding

- CMS typically requires two years of estimate medical to be in cash. Thereafter, the balance can be annuitized based on future cost projections.
- The annuity is an excellent vehicle to draw down medical costs, because it takes advantage of the value of time and your vendor can likely get a rated age quote, which makes the cost even less.
- CMS favors this in our opinion, because there is less chance of fund leakage to pay medical bills since the money is disbursed over time.

Internal Revenue Code Section 104

- The purpose of IRC Section 104 is to allow compensation for injuries or sickness to flow tax-free to the recipient
- There are two sections of the code that apply to structured settlements
 - Section 104 (a) (1) - Workers' Compensation
 - Section 104 (a) (2) - Personal Physical Injury

Internal Revenue Code Section 104 (a) (1)

Workers' Compensation Injuries

- States: ...“gross income does not include amounts received under workers' compensation acts as compensation for personal injuries or sickness.”
- Section 104 (a) (1) also applies to compensation which is paid under a workers' compensation act to the survivor or survivors of a deceased employee.

Internal Revenue Code Section 104 (a) (2)

Personal Physical Injuries

- States:“gross income does not include amounts of any damages received (whether by suit or agreement and whether as a lump sum or as a periodic payments) on account of personal physical injuries or physical sickness....”

Saving Claim Dollars Using Structured Settlements

The Substandard Advantage

- A life insurance company has determined that a claimant's life expectancy is less than normal. The result is a lower cost to purchase the life annuity or an increase in benefits for the same price.
- Obtaining a "rated age" is SIMPLE!
 - Copies of the claimant's medical records are submitted to the life insurance company who then makes a determination whether or not a higher age should be assigned.

Note: The condition does not have to be related to the accident.

Useful Medical Reports

Discharge summary from the original hospitalization (if applicable)	Report of the most recent medical examination by a treating physician	Reports of significant hospitalizations, surgeries or rehabilitation reports within that time
Report from a medical examination at the time of diagnosis or injury	This report should be as current as possible, i.e., within the last 12 months, and preferably the last 6 months.	

Common Medical Notations Likely to Cause Age Adjustment

- Diabetes
- Epilepsy
- Leukemia
- Lung disease
- Lymphoma
- Obesity
- Parkinson's Disease
- Pulmonary disease
- Stroke
- AIDS or A.R.C.
(Aids Related Complex)
- Alcoholism
- Asbestosis
- Blood pressure elevation
- Cancer
- Cardiac problem
- Chemotherapy
- Cigarette smoking

Example of Substandard Age Rating

Male, Age 21		Male, Age 21	
C-6-7 Quadriplegia		C-6-7 Quadriplegia	
Rated Age 47		Rated Age 47	
Annuity to provide:		Annuity to provide:	
\$2,500 per month for life only		Monthly income for life only	
		Cost of Annuity: \$455,583	
	Cost:		Benefit:
Male, Age 21:	\$ 515,588	Male, Age 21:	\$ 2,209
Male, Age 47:	\$ <u>455,583</u>	Male, Age 47:	\$ <u>2,500</u>
Savings:	\$ 60,005	Difference:	\$ 291
Example of Substandard Age Rating			

Sample Case

Components of a Structure

- Cash
- Attorney fees and costs
- Out of pocket expenses
- Walking around money
- Future periodic payments designed to meet known needs
- Lifetime income commencing immediately or deferred to meet future income replacement needs
- Income for a specific period commencing immediately or deferred, to meet needs which will occur over a certain number of years

Administration of the Set Aside Funds

- Self Administration
 - Funds must be segregated and must be an interest bearing account
- Custodial Account
 - Vendor administered (Medivest, Medibill); recommended in allocations exceeding \$100,000
- **Structured Settlement/Annuities**
 - Rated Age (brings down overall cost)
 - CMS approves
 - Cost effective

MSA Example

- 40 year old Male (rated age 50)
- Injury: ankle fusion
- Recommended MSA allocation: \$62,157.07
 - \$20,719.02 in up front cash for initial seed funding (any surgeries plus first two years of medical)
 - \$1,574.05 per year for the life of claimant, if living
- Annuity purchased for \$21,975.00

Total Cost: \$42,694.02

Total Savings: \$19,463.05

Income-Tax Free Settlement Proposal

Barry Sun
DOB: 10/20/1960

INDEMNITY SETTLEMENT

Cash to Plaintiff for Indemnity

\$150,000.00 cash at settlement for attorney fees, liens and expenses.

Annual Income for Life with Certain Period for Indemnity

\$10,000.00 per year for life, 15 years certain, beginning one year from date of funding.

MEDICAL SETTLEMENT

Cash to Fund Medicare Set-Aside

\$32,798.00 Medicare Set-Aside Account Initial Deposit

\$1,700.00 Initial Custodial Fee

Annual Income for Medicare Set-Aside

\$15,487.99 per year for 18 years period certain, beginning one year from funding date.

Annual Income for Life with Certain Period for Indemnity

\$893.70 per year for life, 13 years certain, beginning one year from date of funding.

Custodial Account Fees

\$1,700.00 per year for life only beginning one year from date of funding.

Total Settlement (Inclusive of front cash)

TOTAL	\$521,587.00
GUARANTEED BENEFITS	\$624,899.92
EXPECTED BENEFITS	\$828,499.12

Income-Tax Free Settlement Proposal

Kevin Blackman
DOB: 06/15/1958

Cash at Settlement

\$47,274.00 Medicare Set-Aside Account Initial Deposit
 \$ 1,200.00 Professional Administrative Account Initiation Fee

MSA Funding

Temporary Life for Future Medicare Covered Expenses and Prescriptions
 \$5,503.91 per year for 24 years only if living, beginning one year from date of funding.
Life Only for Professional Administration Annual Fee
 \$1,434.94 per year for life only, beginning one year from date of funding.

MSA Covered Items TOTAL	\$142,160
GUARANTEED BENEFITS	\$ 48,474
EXPECTED BENEFITS	\$ 219,311

Cash at Settlement

\$6,189.04 upfront cash for Non-Medicare covered items.

Funding for Future Non-Medicare covered items.

Life Only for Future Medical Expenses and Prescriptions
 \$6,189.04 per year for life only, beginning one year from date of funding.

Non-MSA Covered Items TOTAL	\$ 97,409
GUARANTEED BENEFITS	\$ 6,189
EXPECTED BENEFITS	\$173,293
MSA and Non-MSA Items TOTAL	\$239,569
GUARANTEED BENEFITS	\$ 54,663
EXPECTED PAYOUT	\$392,604

Income-Tax Free Settlement Proposal

Kevin Blackman
DOB: 06/15/1958

Cash at Settlement

\$47,274.00 Medicare Set-Aside Account Initial Deposit

MSA Funding

Temporary Life for Future Medicare Covered Expenses and Prescriptions

\$5,503.91 per year for 24 years only if living, beginning one year from date of funding.

MSA Covered Items TOTAL	\$119,811
GUARANTEED BENEFITS	\$ 47,274
EXPECTED BENEFITS	\$179,368

Cash at Settlement

\$6,189.04 upfront cash for Non-Medicare covered items.

Funding for Future Non-Medicare covered items.

Life Only for Future Medical Expenses and Prescriptions

\$6,189.04 per year for life only, beginning one year from date of funding.

Non-MSA Covered Items TOTAL	\$ 97,409
GUARANTEED BENEFITS	\$ 6,189
EXPECTED BENEFITS	\$173,293
MSA and Non-MSA Items TOTAL	\$217,220
GUARANTEED BENEFITS	\$ 53,463
EXPECTED PAYOUT	\$352,661

Helpful Hints Regarding CMS Approval

- Obtain rated age for pre-existing or current medical condition
- Determine if it should be self-administered or professionally administered
- MSA vendor should include annuity as alternative funding, if cost effective
- Settlement documents must contain annuity language
- When completing the MSA case settlement sheet, be sure to include the annuity breakdown
- When evaluating a workers compensation claim for MSA consideration and using an annuity for the indemnity settlement, you must calculate the payout total using the total dollars paid out and not the annuity cost

Required Closing Information/Documents

- Premium check to fund the annuity or reinsurance
- MFSS annuity data form with beneficiary designation
- Copy of birth certificate and/or social security card, Medicare card, if applicable
- Copy of executed release
- Original executed uniform qualified assignment and/or reinsurance agreement
- Copy of executed WC Board approval
- Copy of the MSA Settlement Worksheet
- Copy of the CMS approval, if needed



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