

# A Hands-On Approach to Medicare Set Asides

*In other words, “I have an MSA...now what?”*



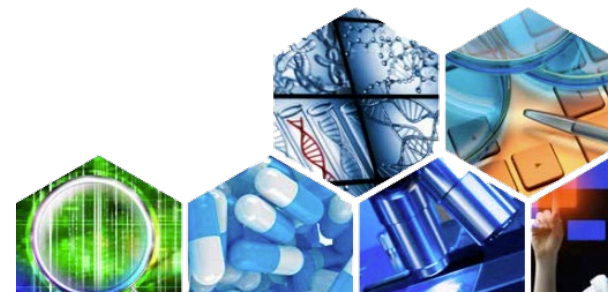
# When Should an MSA Be Considered?

- Medicare must be considered whenever future medical care is being settled.
- CMS looks at insurance claimants in two ways:
  - Is the injured worker entitled to Medicare (at time of settlement)?
  - Is there a reasonably expectation to be Medicare Entitled in the next 30 months?

CMS defines this as:

- Injured Worker has applied for SSDI
  - Injured Worker is receiving SSDI
  - Injured Worker expects to appeal a denial of SSDI benefits
  - Injured Worker is 62 ½ years old
- How do you find out a claimant's entitlement status?
- Social Security Verification Process
  - S.111 Query Response

Age is Not the primary qualifier



# “An MSA is Only as Good as the Information it is Based Upon”

Key Information/Documentation requested to prepare MSA report:

- Referral form
- Claim payment history
- Two years of medical records for each settling body part or condition
- IMEs, AMEs, QME, PQMEs
- Claim prescription drug history
- Accepted and denied body parts/conditions
- Denial Letters
- Multiple dates of injury settling
- Court orders and rulings
- Depositions



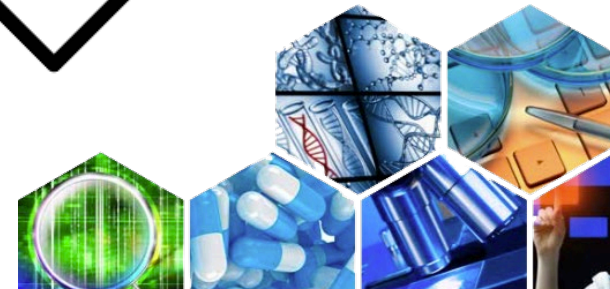
# Clinical Interventions Save Time and Money

## Goal of Clinical Interventions

- Address MSA cost drivers and inappropriate care
- Optimize claimant care
- Avoid CMS Development Letters
- Reduce MSA costs when appropriate

## Types of Interventions (specific to Tower MSA only)

- Physician Follow-up
- Physician Peer Review
- Clinical Oversight



# Steps to MSA Cost Savings

**STEP 1:** Case referred for MSA.

Original MSA = \$248,965

**STEP 2:** Cost containment intervention resulted in letters from two treating physicians. One letter confirmed a Spinal Cord Stimulator was no longer part of the treatment plan and one letter changed a medication from brand name to generic.

New MSA = \$106,782

**Cost Savings = \$142,183**

**STEP 3:** Get an annuity quote for the MSA.



# CMS Submission and Review Thresholds

*“If the parties to a WC settlement do not receive CMS approval, CMS is not bound by the amount stipulated by the parties, and it may refuse to pay for claim-related medical expenses, even if the services would have normally been covered by Medicare”*

## CMS review thresholds

➤ **Class I:** Claimant is a Medicare beneficiary and total settlement amount is greater than **\$25,000.00**;

or

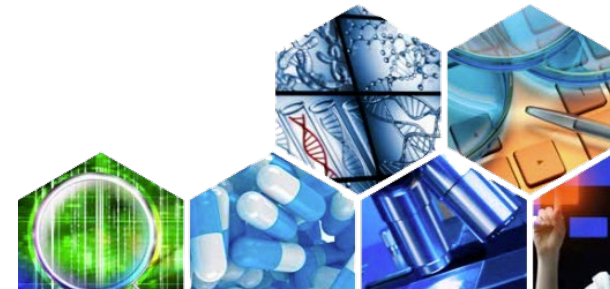
➤ **Class II:** Claimant has a reasonable expectation of Medicare enrollment within 30 months of settlement date and anticipated total settlement amount is expected to be greater than **\$250,000.00**



# CMS WCMSA Reference Guide Updates: 2022

Reg: Non-Submit or Evidence-Based MSAs (on cases that meet CMS review thresholds)

- CMS specifically speaks to evidence-based / non-submit MSAs for the first time in the reference guide.
- CMS will treat the use of non-CMS approved products as a potential attempt to shift the financial burden to Medicare, calling this process “improper”
- As a matter of “policy and practice,” CMS may deny payment for medical services related to WC injuries until total settlement has been exhausted.
- Allows for a showing that, “at the time of exhaustion of the MSA funds, that both the initial funding of the MSA was sufficient, and utilization of MSA funds was appropriate.” Following a potential denial, it appears there may be an opportunity for the beneficiary to prove the MSA and utilization were sufficient and appropriate.



# Checklist of questions CMS needs answered at time of submission

- Claimant signed Consent to Release form?
- Estimated settlement amount?
- Lump sum vs. Structured MSA?
- Self or professional administration of MSA?
- Are there any draft/final settlement documents or court orders for CMS review?
- Depending upon when the MSA was written, updated medical records, claim payment history & pharmacy history





# WHAT IS A STRUCTURED SETTLEMENT?

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A structured settlement provides **future periodic payments** as part of a Workers Compensation settlement.

It is an individualized **blend of immediate cash and periodic payments** rather than a lump sum payment to settle a claim.

Structured Settlements are the **perfect fit for Medicare Set Asides (MSAs)** since CMS allows MSAs to be funded with annual payments.

# WHEN TO CONSIDER A STRUCTURE?



## Catastrophic Cases

High-Exposure



## Death

Benefits



## MSA Allocations

Over \$35,000



## Public Benefit

Entitlement

# TWO WAYS TO FUND AN MSA

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## Lump Sum MSA

(Full Price)

- Full value of the MSA is paid at time of settlement. This the most expensive way to provide the MSA.

## Structured MSA

(Average Cost Savings of 30-40%)

- Seed money paid at settlement and annuity purchased to provide annual payments.
- Annuity quote will follow breakdown in MSA report or CMS Approval letter.

# STRUCTURED MSA Benefits to the Injured Worker

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**Peace of mind** since Medicare's interests are protected.

**Medicare will “kick in”** mid-year if medical expenses exceed MSA account balance.

**Security** knowing they won't outlive the money.

# CASE REFERRAL PROCESS

*Referring a case is easy!*

*Just send a copy of the MSA report and  
CMS approval (if you have it).*

# STEPS TO MSA COST SAVINGS

**STEP 1:** Case referred for MSA.

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**STEP 3:** Get an annuity quote for the MSA.

# MSA EXAMPLE: MSA Report

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## **MEDICARE SET ASIDE**

**TOTAL PROJECTED MEDICAL COST: \$71,058.00**

**TOTAL PROJECTED PRESCRIPTION DRUG COST: \$35,724.00**

**TOTAL WCMSA PROPOSAL: \$106,782.00**

**RECOMMENDED SEED AMOUNT: \$28,536.00**

**ANNUAL DEPOSIT: \$3,402.00 for 23 years**

# MSA EXAMPLE: Settlement Proposal

## MEDICARE SET ASIDE

### Claimant

	Cost	Expected Benefits
<b><u>MSA Seed Money</u></b> \$28,536.00 immediate cash payment.	\$28,536.00	\$28,536.00
<b><u>MSA Annual Payments</u></b> \$3,402.00 annually, beginning 1 year from purchase date, payable 23 years only if Claimant is living.	\$44,286.00	\$78,246.00
<b>TOTAL</b>	<b>\$72,822.00</b>	<b>\$106,782.00</b>

**Annuity Cost Savings = \$33,960 (32%)**



# HOW YOUR SETTLEMENT PARTNERS CAN HELP

Original MSA = \$248,965



MSA after Cost Containment = \$106,782



Cost of Structured MSA = \$72,822



**Total Cost Savings = \$176,143 (72%)**

# MSA EXAMPLE: CMS Approval

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## **Annuities are not just for large cases!**

We have evaluated your proposal and have determined that **\$36,650.00** adequately considers Medicare's interests with respect to Medicare-covered future medical items and services, including prescription drugs.

In order to comply with Section 1862(b)(2) of the Social Security Act, Medicare is not permitted to pay for medical items or services, including prescription drug expenses, related to the workers' compensation claim until the approved WCMSA amount is appropriately exhausted ("properly spent") on related medical care. Where a workers' compensation settlement, judgment, award, or other payment is less than the approved WCMSA amount, Medicare is not permitted to pay for related medical care until the whole settlement, judgment, award, or other payment is properly spent on related medical care. The WCMSA funds must be placed in an interest-bearing account. Funds in the account should not be used for any purpose other than payment of future medical care that is Medicare covered and is related to the workers' compensation claim.

**The account must be funded by an initial deposit of \$5,529.00 and subsequent equal payments of \$2,074.00 over 15 year(s).**

# MSA EXAMPLE: Settlement Proposal

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## MEDICARE SET ASIDE

### Claimant

Date of Birth: March 9, 1947

	Cost	Expected Benefits
<b><u>MSA Seed Money</u></b> \$5,529.00 immediate cash payment.	\$5,529.00	\$5,529.00
<b><u>MSA Annual Payments</u></b> \$2,074.00 annually beginning 1 year from purchase date, payable 15 years only if Claimant is living.	\$16,398.00	\$31,110.00
<b>TOTAL</b>	<b>\$21,927.00</b>	<b>\$36,639.00</b>

**Annuity Cost Savings = \$14,712 (40%)**

# LIFE CONTINGENT v. GUARANTEED PAYMENTS

Life Contingent (“only if living”) payments are the most cost-effective way to provide the annual MSA payments but there is still a significant cost savings with Guaranteed payments.

## LIFE CONTINGENT PAYMENTS

**CMS Approval = \$95,421**

**MSA Seed Money = \$11,928**

**Annuity Cost = \$52,386**

**Total Cost = \$64,314**

**Cost Savings = \$31,107**

## GUARANTEED PAYMENTS

**CMS Approval = \$95,421**

**MSA Seed Money = \$11,928**

**Annuity Cost = \$57,730**

**Total Cost = \$69,658**

**Cost Savings = \$25,763**

# THE CASE WAS REFERRED: Now What?

1

## Receive Proposals

- Proposals valid 7 days
- Forward to Defense Attorney

2

## Diary and Follow Up

- Added to active case diary
- Check in every 45-60 days

3

## Case Settled

- Notify of settlement
- Provide terms of agreement

# THE CASE SETTLED: Now What?

4

## Finalize Annuity Pricing

- Instructions sent via email.
- Funding Deadline is Critical!

5

## Prepare Annuity Language For Settlement Documents

- Language required for future periodic payments
- Need copy of approved settlement documents

6

## Issue Annuity Contract

- Copy sent to all parties
- Consultant retains copy

## What is a Professional Administrator?



**Establishes a bank account** for claimant's future medical care



Receives bills and **pays them on behalf of the claimant**



In the case of an MSA, **handles all required annual reporting**



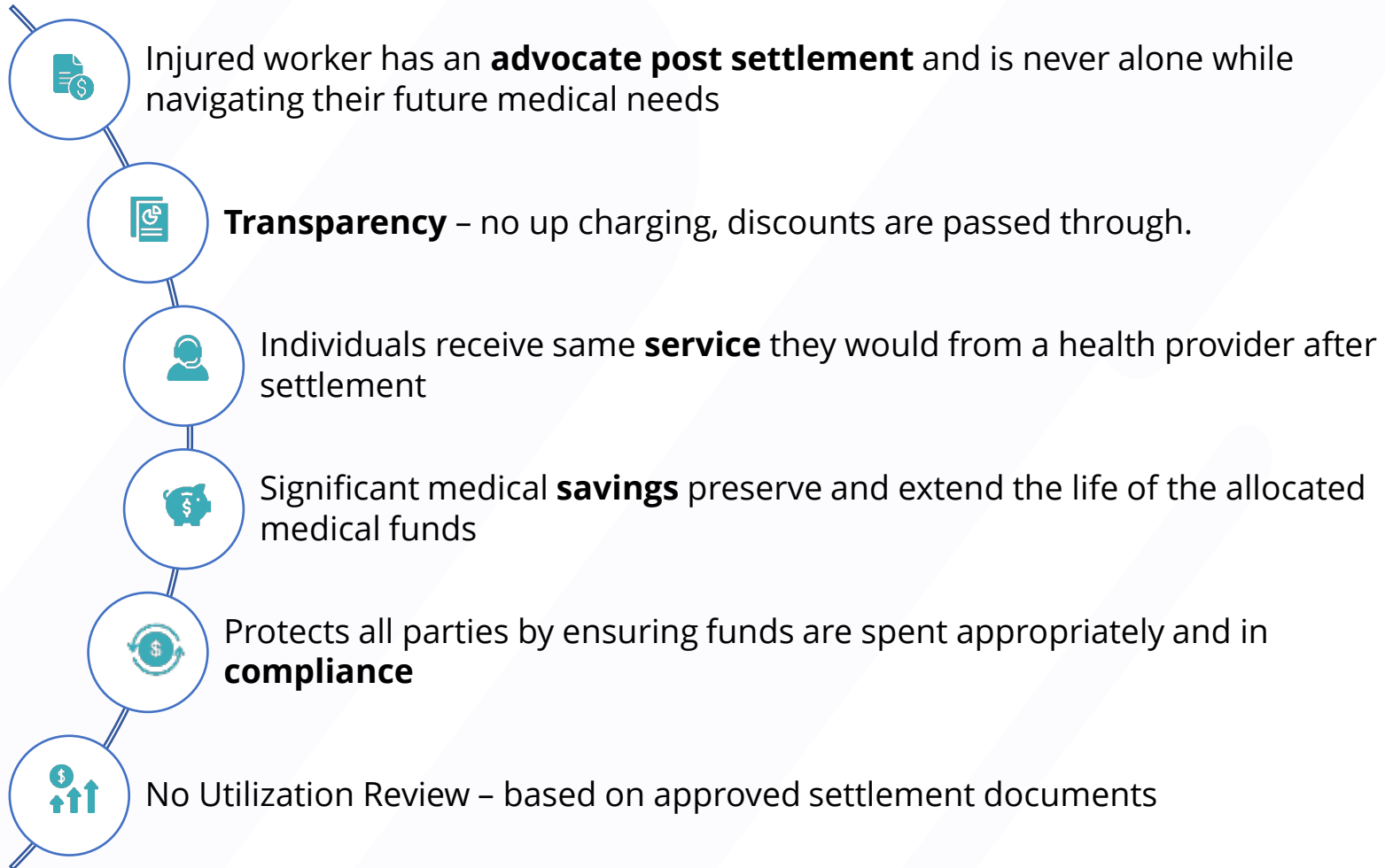
Neutral 3<sup>rd</sup> party - helps **bridge the gap to settling**  
future medical claims

## Injured Worker – Factors to Consider

- Mental ability, language barrier, and educational
- Extent of treatment and prescriptions
- Complicated medical conditions
- Any issues managing money?
- Injured worker also receiving SSI or Medicaid
  - Preserve and possibly enhance their benefits
- Do their own taxes
- Administration is lifetime



# Advantages of Professional Administration



# Complex Medical Billing



## WITHOUT

- 1 After settlement, John goes to the doctor for back pain caused by a workers' comp injury and mentions having reoccurring migraines lately.
- 2 John must make sure his pre-existing back injury is billed separately from his new migraine condition.
- 3 When John gets the bill, he's not sure how to negotiate the bill or verify accurate coding. His attorney had told him both were required to keep his future Medicare benefits protected.

John wishes he had an expert to ask before making a mistake.

VS



## WITH

- 1 Mary has an MSA for a work comp knee injury - her doctor prescribes her ongoing physical therapy and pain medication.
- 2 Mary focuses on her recovery while Professional Administrator:
  - Receives her medical bills directly
  - Reviews bills to ensure expenses are Medicare-covered and related to her injury per CMS guidelines
  - Corrects billing errors and negotiates to lower bills and apply state fee schedule (if applicable)
- 3 Professional Administrator' team works with her providers to ensure her bills are always properly paid.

# Settlement Process and Engagement

## Interest in Settlement

Injured worker has reached plateau. Settlement demand received. MMI report received.

At the time Allocation is ordered or during negotiation, adjuster can involve Professional Administrator

## Outreach

Professional Administrator following instruction from the adjuster, Professional Administrator will contact the plaintiff attorney or injured party to discuss the benefits of professional administration.

Professional Administrator' national team is on-hand to attend mediations, settlement days, or help with large complex cases

## Settlement

Professional Administrator will provide the CareGuard member agreement to accompany the settlement docs. Professional Administrator confirms all documents and funding received

Professional Administrator will track all settlements with professional administration

# CareGuard Overview

- Bank account pursuant to CMS Guidelines
- Receive bills and provide bill review to reduce to state fee schedule or below (PPO/PBM)
- Injured worker can go to any doctor or pharmacy, no MPN or UR, we do not direct care
- Technology-enabled online portal provides members with their account balance, spending trends, savings amounts and more
- Care Advocate team to answer questions and provide support post settlement
- If MSA funds, we provide 100% compliance with CMS, including coordination of benefits with Medicare



## MSA Exhaustion

- “Permanent Exhaustion” occurs when the MSA funds are fully spent, and no additional funding is expected.
- “Temporary Exhaustion” occurs when the MSA funds are fully spent prior to the next periodic funding of the account.
- CMS will assume primary responsibility for allowable expenses related to the injury permanently in the case of Permanent Exhaustion, and until the MSA funds are replenished by the next periodic funding in the case of Temporary Exhaustion.

## Death of the Beneficiary

- Upon death of the claimant, any remaining unpaid allowable claims are to be paid from the MSA funds before disbursing them
- Medical providers and suppliers have 12 months from the date of service to submit claims
- Keeping the MSA fund intact for a period of time after the injured worker passes away is a reasonable consideration
- Any unused MSA funds will then be returned in accordance with the settlement language



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