



## **Accepting Payment from Patients with a Workers' Compensation Medicare Set-Aside Arrangement (WCMSA), a Liability Insurance Medicare Set-Aside Arrangement (LMSA), or a No-Fault Insurance Medicare Set-Aside Arrangement (NFMSA)**

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### **PROVIDER TYPE AFFECTED**

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This MLN Matters® Article is intended for providers, physicians, and other suppliers who are told by patients that they must pay the bill themselves because they have a Workers' Compensation Medicare Set-Aside Arrangement (WCMSA), a Liability Insurance Medicare Set-Aside Arrangement (LMSA), or a No-Fault Insurance Medicare Set-Aside Arrangement (NFMSA).

### **WHAT YOU NEED TO KNOW**

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This article is based on information received from Medicare beneficiaries, their legal counsel, and other entities that assist these individuals indicating that physicians, providers, and other suppliers are often reluctant to accept payment directly from Medicare beneficiaries who state they have a Medicare Set-Aside Arrangement (MSA) and must pay for their services themselves. This article explains what a MSA is and explains why it is appropriate to accept payment from a patient that has a funded MSA.

Please review your billing practices to be sure they are in line with the information provided.

### **BACKGROUND**

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Medicare is always a secondary payer to liability insurance (including self-insurance), no-fault insurance, and workers' compensation benefits. The law precludes Medicare payment for services to the extent that payment has been made, or can reasonably be expected to be made promptly, under liability insurance (including self-insurance), no-fault insurance, or Workers' Compensation (WC). (See Section 1862(b)(2)(A) of the Social Security Act, cited in the U.S. code at 42 U.S.C. § 1395y(b)(2)(A)(i)). When future medical care is claimed, or a settlement,

judgment, award, or other payment releases (or has the effect of releasing) claims for future medical care, it can reasonably be expected that the monies from the settlement, judgment, award, or other payment are available to pay for future medical items and services which are otherwise covered and reimbursable by Medicare.

Whether those services are associated with a liability insurance, no-fault insurance, or WC situation, Medicare should not be billed for future medical services until those funds are exhausted by payments to providers for services that would otherwise be covered and reimbursable by Medicare.

Reminders:

- Liability insurance (including self-insurance) includes all types of liability insurance. No-fault insurance is *not* limited to automobile no-fault. It is sometimes referred to as “med-pay” or “personal injury protection/PIP”.
- WC includes a WC law or plan of the United States or any state. It also applies to the WC plans of the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands as well as to the Federal WC plans provided under the Federal Employees Compensation Act, the U.S. Longshoremen’s and Harbor Workers’ Compensation Act (and its extensions).

(See also 42 C.F.R. §§ 411.40, 411.43, and 411.50.)

A MSA is a financial arrangement that allocates a portion of a settlement, judgment, award, or other payment to pay for future medical services. The law mandates protection of the Medicare trust funds but does not mandate a MSA as the vehicle used for that purpose. MSAs are the most frequently used formal method of preserving those funds for the Medicare beneficiary to pay for future items or services which are otherwise covered and reimbursable by Medicare and which are related to what was claimed or the settlement, judgment, award, or other payment had the effect of releasing. These funds must be exhausted before Medicare will pay for treatment related to the claimed injury, illness, or disease.

Medicare beneficiaries are advised that before receiving treatment for services to be paid by their MSA, they should advise their health care provider about the existence of the MSA. They are also notified that their health care providers should bill them directly, and that they should pay those charges out of the MSA **if**:

- The treatment or prescription is for the liability insurance, no-fault insurance or workers’ compensation injury/illness/accident; AND
- The treatment or prescription is something Medicare would cover.

For WC, the Centers for Medicare & Medicaid Services (CMS) has a formal process that allows for the review of proposed MSA amounts if specific criteria are met. While CMS recommends use of this process, proposed WCMSA amounts are not required to be submitted to CMS for review. CMS utilizes its Workers’ Compensation Review Contractor for the review of voluntarily-submitted proposed WCMSA amounts. CMS currently has no such review process for proposed LMSA amounts or proposed NFMSA amounts.

The obligation to protect the Medicare trust funds exists regardless of whether or not there is a formal CMS approved MSA amount. Because the CMS review process is voluntary for WCMSA amounts, and there is no formal process for reviewing proposed LMSA or NFMSA amounts, a Medicare beneficiary may or may not have documentation they can provide the physician, provider, or supplier from Medicare approving a Medicare Set-Aside amount.

## PROVIDER ACTION NEEDED

Where a patient who is a Medicare beneficiary:

- States that he/she was involved in a liability insurance, no-fault insurance, or workers' compensation situation;
- States that he/she is required to use funds from the settlement, judgment, award, or other payment to pay for the items or services related to what was claimed or which the settlement, judgment, award, or other payment;

It is appropriate for you to document your records with that information and accept payment directly from the patient for such services.

## ADDITIONAL INFORMATION

If you have any questions, please contact your Medicare Administrative Contractor (MAC) at their toll-free number. That number is available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Review-Contractor-Directory-Interactive-Map/>

## DOCUMENT HISTORY

Date of Change	Description
September 19, 2017	Initial article released.

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