

CPT SPECIAL NEEDS TRUSTS

Rules of MSA Submission

Workers Compensation MSAs:

CMS has set forth clear guidelines on submitting Workers' Compensation MSAs for approval:

1. If a WC settlement is greater than \$250,000.00 AND the claimant is *reasonably expected* to become a Medicare beneficiary within 30 months of the settlement date, then a CMS-approved Medicare Set-aside is appropriate.¹
2. Situations where an individual has a *reasonable expectation* of Medicare enrollment for any reason include but are not limited to:
 - a) The individual has applied for Social Security Disability Benefits;
 - b) The individual has been denied social Security Disability Benefits but anticipates appealing that decision;
 - c) The individual is in the process of appealing and/or re-filing for Social Security Disability Benefits;
 - d) The individual is 62 years and 6months old (i.e., may be eligible for Medicare based upon his/her age within 30 months); or
 - e) The individual has an End Stage Renal Disease (ESRD) condition but does not yet qualify for Medicare based upon ESRD.²
3. As of 04/25/06, CMS will only review new Workers Compensation proposals for Medicare beneficiaries where the total settlement amount is greater than \$25,000.00. However, this is merely a **workload review** threshold and not a substantive dollar or "safe harbor" threshold.
4. Both the beneficiary and non-beneficiary review thresholds are subject to adjustment. Changes to these thresholds and other policies and procedures can be found at: www.cms.hhs.gov/WorkersCompAgencyServices³

¹ CMS Memo Ref: 05/23/03 Q1

² CMS Memo Ref: 04/21/03 Q2

³ CMS Memo Ref: 04/25/06

General Liability MSAs:

Currently, CMS does not have a formal review process in place for MSAs on General Liability cases in the same way it does for Workers' Compensation cases. The approval of General Liability MSAs is being handled by CMS' Regional Offices. Each of CMS' six (6) regional offices has the **option** to review and approve General Liability MSAs.

It has been in our experience that the following factors are relevant to the regional offices when determining whether or not to review a General Liability MSA: size of total settlement, fluctuations in claimant's Medicare pay-out history, and the level of experience with MSAs the submitting Attorney has. Often times, CMS will send a letter upon receipt of the submission stating their choice not to review simply because of workload.

In short, the decision to submit a completed General Liability MSA to CMS for approval is entirely discretionary – at the option of the responsible parties. There is no guarantee that this will not change in the future. For the present time, it is merely a step further that the responsible parties may take in demonstrating a good faith effort to protect Medicare's future interest.

DISCLAIMER

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