Workers’ Compensation Medicare Set-Aside Arrangements

Information for those who counsel people with Medicare

June 2015
Workers’ Compensation

- Programs for workers suffering from occupational injury or disease
- State regulated, with laws determined by each state legislative body and implemented by a state agency
- Programs provide the payment of
  - Lost wages
  - Medical treatment
  - Rehabilitation services
Workers’ Compensation and Medicare

- Workers’ compensation (WC) is a type of liability insurance
  - Following Medicare Secondary Payer rules, WC pays first
    - Medicare pays second
    - For work-related injury or disease

<table>
<thead>
<tr>
<th>Individual</th>
<th>Condition</th>
<th>Pays First</th>
<th>Pays Second</th>
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<td>Is covered under Workers’ Compensation (WC) because of a job-related illness or injury</td>
<td>The individual is entitled to Medicare</td>
<td>WC (for health care items or services related to job-related illness or injury) claims</td>
<td>Medicare</td>
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A WCMSA

- Estimates the total cost that will be incurred for all medical expenses otherwise reimbursable by Medicare for claim-related conditions during the course of the claimant’s life
- Allocates a portion of the WC settlement for certain future claims
- May be reviewed by Medicare

No legal obligation to set up a WCMSA
WCMSA Funds

- WCMSA funds can only be used to pay for medical care or prescriptions related to your workers’ compensation claim.
- You can use your WCMSA even if you're not yet enrolled in Medicare.
  - You can only use the funds in your WCMSA to pay for items and services that would otherwise be covered by Medicare.
Additional Use for WCMSA Account Funds

- You can pay for these if directly related to the WCMSA account
  - Document copying charges
  - Mailing fees/postage
  - Any banking fees related to the account
  - Income tax on interest income from the set-aside account
- You may not use the WCMSA account to pay for
  - Administrative fees
  - Expenses for administration of the WCMSA
  - Attorney costs for establishing the WCMSA
  - Medicare premiums, copayments, and deductibles
Medicare Coverage Questions

- For questions about Medicare’s coverage of a specific item, service, or prescription drug, or to help determine if you may pay for it from your WCMSA account
  - Call 1-800-MEDICARE (1-800-633-4227)
  - TTY users should call 1-877-486-2048
  - Visit Medicare.gov
Scenario 1

Saul has Medicare Part A and Part B and a WCMSA for an arm injury suffered when he was working. He had surgery on his arm, followed by extensive physical and occupational therapy. Which of the following expenses related to his WC occurrence can be paid with Saul’s WCMSA?

a. Medicare Part A copayments
b. Acupuncture to ease pain
c. Physical and occupational therapy costs
d. Postage fees to mail WCMSA documents
e. a and c
f. c and d
Setting Up the WCMSA

Generally there are 4 steps involved in creating a CMS-approved WCMSA

1. Analysis of the claim and medical information to determine the amount of money required for the fund

2. Negotiation of a tentative settlement and preparation of draft settlement documents to settle the WC case

3. Obtaining approval from CMS for the amount of the proposed WCMSA (not required)

4. Finalizing the settlement and funding the WCMSA
Who can help with the WCMSA process?

- You may want help to set up the WCMSA from
  - An attorney to
    - Explain the process and provide legal help
    - Decide who will administer the WCMSA
      - Self managed or professionally managed

- WCMSAs can be administered by
  - You
  - Appointed guardian
  - Professional administrator

- Administration includes establishing WCMSA, paying for Medicare-covered services from the account, and reporting the expenditures to CMS
Your WCMSA Responsibilities

- Establish and fund the WCMSA with CMS’ approval (approval optional)
- Use the account
- Communicate with health care providers
- Review and pay bills
- Keep records
- Attest annually
- Report changes
Set Up the WCMSA Account

- The WCMSA account holds a portion of your settlement funds
- Should be in an account that earns interest and is insured by the Federal Deposit Insurance Corporation
- This account should be separate from your other personal accounts
Lump-sum payment (easier to monitor)

- Single payment intended to pay for all future medical expenses and disability benefits related to the WC claim
- Medicare makes no payments for claim-related medical expenses until all WCMSA funds are exhausted
Types of WCMSA Funding—Structured Settlement

- Structured settlement
  - Initial deposit to cover first surgical procedure or replacement and 2 years of annual payments
  - Subsequent annual deposits
Managing Your WCMSA Funds

Keep the following in mind when you manage your WCMSA:

- If you aren't sure what type of services Medicare covers, call Medicare before you use any of the money that was placed in your WCMSA.

- Keep records of your workers' compensation-related medical and prescription drug expenses, including what items and services you got and how much money you spent on your work-related injury, illness, or disease.

- After you use all of your WCMSA money appropriately, Medicare can start paying for Medicare-covered services related to your work-related injury, illness, or disease.
Communicate With Your Health Care Providers

- Advise your health care providers about your WCMSA before you get treatment for your WC injury.
- Health care providers should bill you directly:
  - You should pay them out of your WCMSA account if:
    - The treatment or prescription is for the WC injury AND
    - The treatment or prescription is something Medicare would cover.
Managing Your WCMSA

Contact the Benefit Coordination & Recovery Center (BCRC) for

- Questions about annual attestations
- Annual accountings
- To notify when all funds are spent

Contact the BCRC

By Telephone

Monday- Friday, 8:00am-8:00pm, Eastern Time
1-855-798-2627 OR
1-855-797-2627 (TTY/TDD)

By Mail

Benefits Coordination & Recovery Center (BCRC)

NGHP
P.O. Box 138832
Oklahoma City, OK 73113

By Fax

1-405-869-3309
WCMSA Self-Administration Process

1. Receive settlement for WCMSA and deposit in interest-bearing account.
2. Notify health care providers of WCMSA situation.
3. Visit health care provider. Treatment is related to WC injury AND a Medicare-covered service.
4. Account Exhausted
   - Enough $ in WCMSA to pay health care provider? NO
   - Send attestation to Medicare
   - YES
   - Pay medical bills from WCMSA, and keep complete records.
   - Send attestation annually to Medicare

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Self-admistration Resources

- Self-Administration Toolkit to help people manage their WCMSA
Exhaustion of Funds

- If the whole fund, including interest and carry-forwards, is exhausted
  - Medicare pays primary for WC claim-related medical expenses
  - Until next deposit for structured settlement
- You need to notify the Benefit Coordination & Recovery Center (BCRC) the funds are spent
  - The BCRC requests the beneficiary submit a letter stating when the funds were spent and a summary of how the money was used
  - If they don’t they will get claims denied
Death of Claimant

- If a claimant dies before the WCMSA is completely exhausted
  - The CMS Regional Office and the BCRC will ensure that all claims have been paid
  - Any amount left over in the WCMSA may be disbursed pursuant to state law, once Medicare’s interests have been protected
  - The settlement itself often will dictate the appropriate dispersal of funds upon the death of the claimant
WCMSA Resources

- Workers’ Compensation Medicare Set-Aside Portal (WCMSAP)
- WCMSA Reference Guide
- WCMSA Web Page
- WCMSA Regional Office Resources
The WCMSAP allows electronic submission of WCMSAs

- The recommended method for submitting a WCMSA for review since it’s more efficient than sending this information via the mail
- Attorneys, Medicare beneficiaries, claimants, insurance carriers, and WCMSA vendors may use the WCMSAP to enter case information directly
- Registration is required to use the WCMSAP
The WCMSA Reference Guide is a resource for attorneys, vendors and life care planners that submit WCMSA proposals to CMS.

Visit CMS.gov to access tools and information about WCMSAs

WCMSA Regional Office Resources

- Each CMS Regional Office has dedicated WCMSA staff
- CMS.gov/About-CMS/Agency-Information/RegionalOffices
  - Check for your regional office’s contact information in the download section
Know Your Resources?

Match the WCMSA resource with its description.

1. Tool to help self manage WCMSA account ______
   A. Workers’ Compensation Medicare Set-Aside Portal

2. Resource to help with specific WCMSA issues ______
   B. WCMSA Self Administration Toolkit

3. General WCMSA information source ______
   C. CMS WCMSA webpage

4. For attorneys, claimants, insurance carriers, and vendors to enter WCMSA case information ______
   D. CMS regional office WCMSA staff
Scenario 2

Roger injured his neck when he fell at work. He’s currently negotiating a WC settlement. He needs surgery and extensive physical therapy.

Roger would like to join a local pool after he finishes his initial rounds of physical therapy so he can continue aqua therapy and perhaps go for regular massage treatments to help with his neck pain.

What would you recommend?
Scenario 2 Review

Pool memberships and massage treatments aren’t covered by Medicare, so Roger can’t pay for them out of his WCMSA.

However, Roger hasn’t finished negotiating his WC settlement. He can work with the WC insurer to set up 2 set-aside arrangements, 1 for his Medicare expenses, and 1 for non-Medicare medical expenses.
Milly has a WCMSA in place. She’s planning on permanently moving out of the country. She’s concerned that the money she hasn’t spent can’t be used outside the United States and could be lost.

What does Milly need to know?
Scenario 3 Review

Medicare doesn’t pay for care outside of the U.S. If Milly moves before she spends all of the money in her WCMSA on Medicare-related expenses, the remaining funds will stay in the WCMSA account.

If Milly spends the funds on items that aren’t covered by Medicare, she’ll need to pay out-of-pocket for any expenses related to her WC injury if she ever returns to the U.S.
Catherine is settling her WC claim, and is in the process of setting up a WCMSA. She has the option of administering the arrangement herself, or having it professionally managed.

Why might Catherine consider having it professionally managed?
Catherine can use the WCMSA Self Administration Toolkit to help her manage documents that support her WCMSA expenditures at no cost. She will need to keep track of her account expenditures in case she’s audited by Medicare. Or she can pay to have her account professionally managed.

A professional management company will charge Catherine to manage her account, but will ensure that the proper documentation is filed, with the added benefit that the firm may be able to negotiate a better rate on the medical services Catherine receives.
Scenario 5

Walter thinks his WCMSA has too much money allocated to paying his Medicare-related expenses. What are Walter’s options?
If Walter’s claim has been settled, the amount is fixed, and can’t be changed. Walter can have his attorney submit the arrangement to CMS for re-review, if there has been an obvious mathematical error, or if there is new evidence or documentation that CMS hadn’t reviewed.

Or, Walter may decide not to settle the claim, and have the WC insurer keep paying his work-related medical services.
Scenario 6

Rose has a WC injury. She isn’t a Medicare beneficiary, and won’t be eligible for Medicare for 23 months, when she turns 65.

Why should Rose set up a WCMSA now?
Scenario 6 Review

Rose has a reasonable expectation of enrolling in Medicare within 30 months of the WC settlement date, since she will turn 65 in 23 months.

There are no statutory or regulatory provisions requiring that a WCMSA proposal be sent to CMS. However, submission of a WCMSA proposal is a process CMS recommends to ensure that the parties settling workers compensation claims are taking Medicare’s interest into account.
Scenario 7

James had a small fire in his house and lost his Medicare-related expense receipts that he’d been saving for the past 9 months. He also spent $5,000 of his WCMSA to help pay his granddaughter’s college tuition. What should James do now?
Scenario 7 Review

James can try to contact his medical and prescription drug providers to see if he can get copies of the appropriate documentation to submit to the BCRC. James also needs to return the $5,000 that he inappropriately spent back into his WCMSA account.

Medicare won’t pay for medical services that should have been covered by the WCMSA in the amount of the misused funds.
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