



Medicare Compliance and Protecting Public Benefits

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Things to Consider

- What type of benefits is the injured party receiving
- What does post-settlement medical care look like
- Is the injured party prepared/capable of managing their future medical funds
- Do they have access to pricing/discount networks
- Are long term benefits being protected
- Unforeseen changes in medical condition

The Medicare Secondary Payer Statute

In 1980 Congress enacted the Medicare Secondary Payer (MSP) Statute (42 U.S.C. § 1395y(b)), giving Medicare rights as a Secondary Payer. The MSP and its regulations prohibit Medicare from making a payment where there is a primary payer involved.



“No double-dipping”

The Medicare Secondary Payer Statute

Types of insurance plans deemed primary to Medicare by the statute:

● Workers' Compensation

● Liability Insurance

● No-Fault Insurance

● Self-Insured Plans

● Automobile Insurance

Complying with the MSP Statute is Mandatory

- ▶ Complying with the MSP statute regarding past and future medicals is not limited to WC claims
- ▶ CMS Stalcup Memo – 5/25/11
 - The law requires that the Medicare Trust Funds be protected from payment for future services whether it is a WC or liability case. There is no distinction in the law
 - There is no formal CMS review process in the liability arena as there is for WC. However, CMS does expect the funds to be exhausted on Medicare covered and otherwise reimbursable services related to what was claimed and/or released before Medicare is ever billed
 - Each attorney is going to have to decide, based on the specific facts of each of their cases, whether or not there is funding for future medicals and if so, a need to protect the Trust Funds



KNOW THE RULES



Why is Medicare Interested in the Settlement?

- ▶ Medicare wants to make sure it is not paying for items when a primary plan (primary payer) is responsible for payment
- ▶ CMS wants to make sure that settling parties are not shifting the payment burden to Medicare
- ▶ Medicare wants to make sure that if it has paid for any items that are covered by a primary plan, it is reimbursed for those funds

How Will Medicare Find Out About the Settlement?

- ▶ Effective July 1, 2009, the MMSEA requires that “applicable plans” must first determine whether an injured party (including an individual whose claim is unresolved) is entitled to Medicare benefits. The primary payer must then report the “required information,” once the case is resolved, to the Secretary of the Dept. of Health and Human Services (Secretary of HHS) in the “form, manner, and frequency” the Secretary prescribes. (CMS is a regulatory body under HHS)
- ▶ If this information is not provided to Medicare in the form, manner, and frequency requested, Medicare may impose a fine of up to \$1000 per day, per injured party, as Civil Monetary Penalties (CMP's)





Addressing Past Medicals on a Case – Medicare Lien

- ▶ Does the injured party have a Medicare lien?
- ▶ Once Medicare entitlement has been verified, initiate a Medicare lien investigation.
- ▶ Once a settlement has been reached, request an updated Medicare lien
- ▶ Once a final demand has been issued, it must be paid within 60 days to avoid penalties and interest

What is a Medicare Set Aside Allocation?

- ▶ A multi-page report that outlines Medicare covered, case related future medical treatment and prescriptions
- ▶ Based on the most recent two years of narrative medical records
- ▶ Indicates the recommended amount to set aside to protect Medicare's future interest in the case
- ▶ MSA funds should be spent according to Medicare guidelines
- ▶ If MSA funds are spent correctly, Medicare will step in and become the primary payer



MSA Report Summary



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Proposed Medicare Set-Aside Allocation Report Summary For
Jane Sample

Report Date: 02/03/2020
Allocator/Nurse Review: Anna Childers, RN, BSN, CCM, MSCC

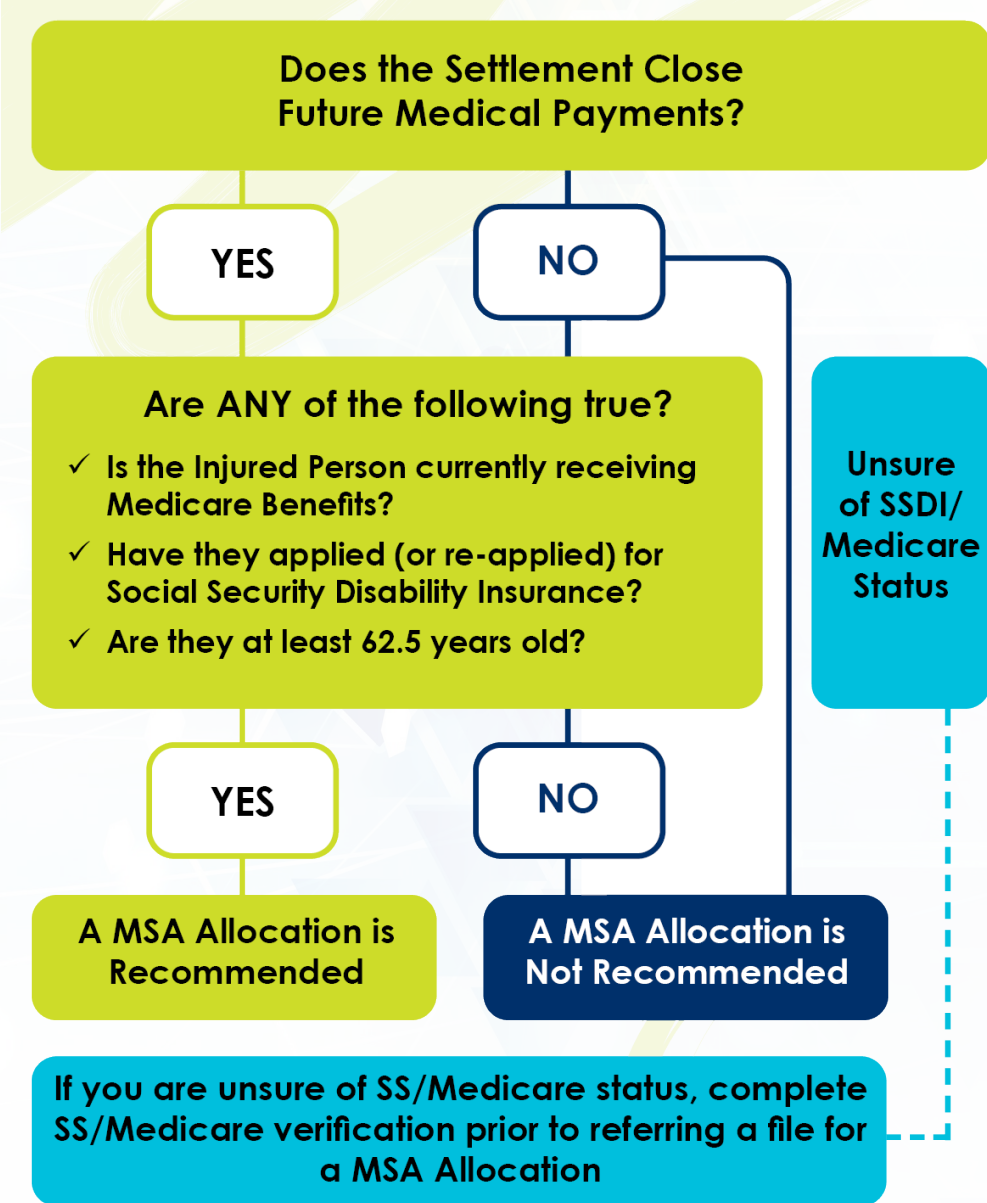
Identifying Information and Medicare Set Aside Allocation Summary

Name:	Jane Sample	Carrier/Representative:	US Insurance Carrier
Address:	1234 Main Street Los Angeles, CA 90210	Contact Person:	Joe Sample
Phone Number:	(444) 555-6677	Address:	P.O. Box 1234 Los Angeles, CA 90210
Date of Birth:	01/01/1953	Phone Number:	(444) 555-7891
Date of Injury:	12/01/2016	Claim #:	389-21-W
Gender:	Female	State of Jurisdiction:	CA
Social Security #:	012-34-5678	Insured/Employer:	Acme Specialties, Inc.
Medicare Status:	Not Indicated	Address:	7421 State Street Los Angeles, CA 90210
Medicare #:	Not Indicated	Phone Number:	(444) 222-6678
Case Type:	Not Indicated	Defense Attorney:	Defense Attorney Law Firm
WC Classification:	Not Indicated	Contact Person:	Defense Attorney, Esq.
Attorney:	Claimant Attorney Law Firm	Address:	615 Market Street Los Angeles, CA 90210
Contact Person:	Claimant Attorney, Esq.	Phone Number:	(444) 333-6585
Address:	321 Market Street Los Angeles, CA 90210		
Phone Number:	(444) 333-5596		
Proposed Settlement			
Date:	Not Indicated		
Life Expectancy:			17 Years
Future Medical Treatment Amount:			\$96,433.11
Future Prescription Drug Treatment Amount:			\$36,444.60
Source: Redbook / AWP			
Total MSA Amount:			\$132,877.71
MSA Annuity Calculation			
Seed:			\$53,573.87
Annual Annuity for MSA Funding:			\$4,956.49





Is a MSA Allocation Recommended?



What Happens to the MSA Funds?

Two options:



Custodial Account

(Professional Administration)
A company is hired to manage the injured party's MSA funds per the CMS guidelines

Self Administration

The injured party manages their own MSA funds per the CMS guidelines



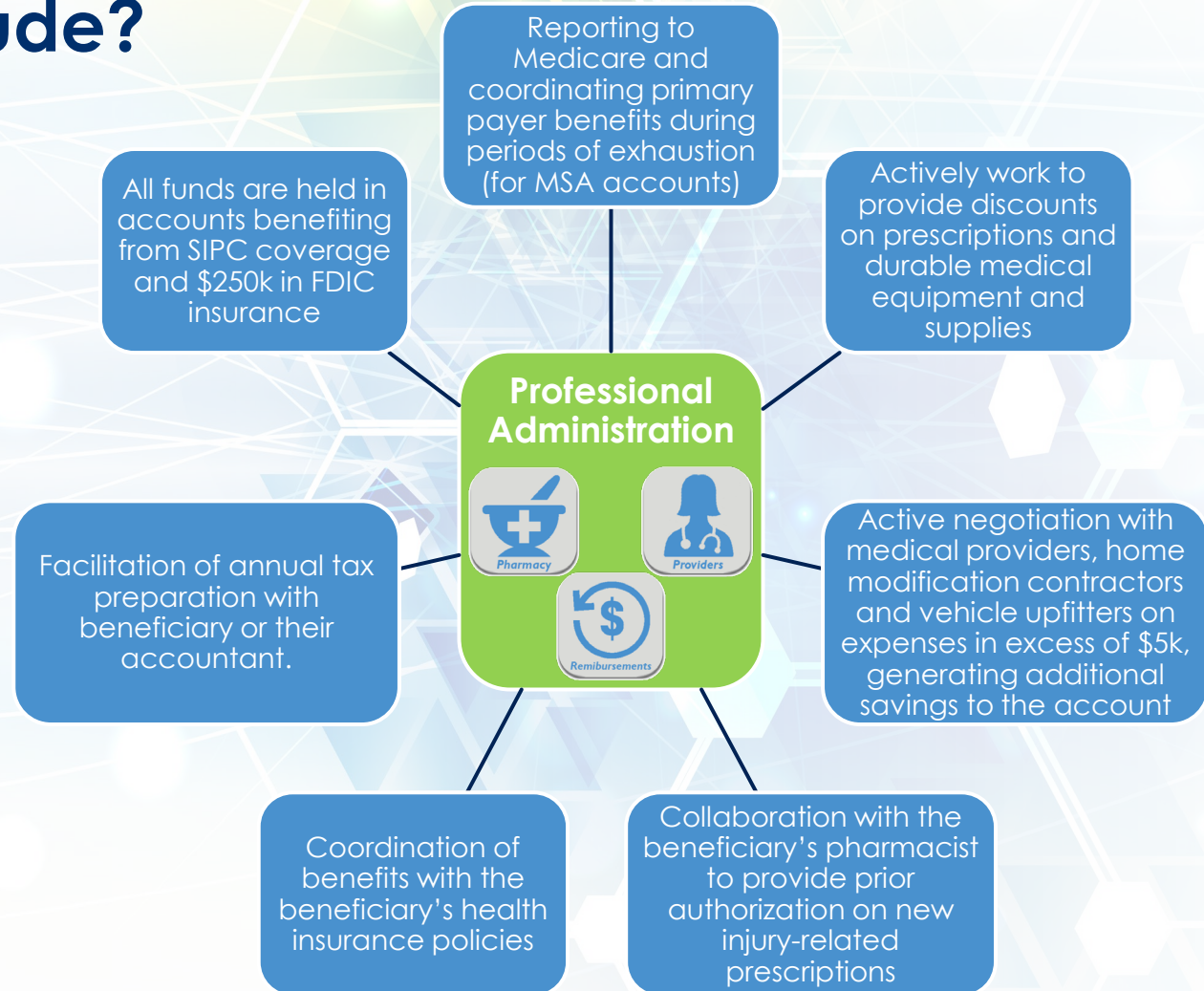
CMS Requirements

- Funds must be placed in an interest-bearing account (CMS Self-Administration Letter)
- A professional administrator must forward annual accounting statements to CMS (7/31/01)
- MSA funds should only be used for Medicare covered, case related items
- A person may self-administer his/her own MSA, but all the rules and regulations are the same (4/22/03)
- An annual self-attestation letter is required for self-administered MSAs
- Administration fees and attorney fees cannot be charged to the MSA account (5/7/04)





What does Professional Administration include?



Maximizing Settlement Value with Professional Administration

CA Case – 65 y/o female – slip and fall – Bi-Lat Knees and Psyche

Pro Admin Savings

Claims Billed = \$52,745

68%
Savings





Social Security Disability

SSI

Supplemental Security Income

65+ Years, Blind, or Disabled

Income Restrictions

Medicaid After 2 Months

**Medicaid benefits vary State by State*

SSDI

Social Security Disability Insurance

Recent Work History (within 5 Years)

Unable to Work Due to Disability

Medicare After 2 Years



MSA Funds and a Special Needs Trust



In most states, MSA funds are counted as an asset towards Medicaid eligibility. A SNT shields those funds to protect Medicaid benefits





Common Medicaid Covered Items Which Affect Settlement Discussions

- Prescription drugs
- Inpatient/Outpatient hospital services
- Skilled nursing facility
- In Home Support Services (IHSS) caregiving hours
- Regional Center programs (California)
- Transportation to medical care
- Durable Medical Equipment

Tools for Settlement Discussions

- Administration can bridge the gap for future medical funds during settlement discussions
- Protecting government benefits is crucial
- Combine a structured settlement with professional administration for maximum savings and long-term protection
- Administrator becomes the advocate for the injured party post settlement





Products & Services

- 1 Professional Administration...
MSAs and/or customized medical custodial accounts
- 2 Medicare Set-Asides (MSAs)...
- 3 Lien Resolution...
Medicare, Medicare Advantage, Medicaid, Veterans/TriCare, FEHBA, ERISA, Hospital Bills, Private Party Liens
- 4 Medical Cost Projections...
- 5 Self-Administration Kit (SAK)
- 6 Trust Advisor Services



Q&A

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Thank You