

Workers' Compensation Update

January 25, 2022

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New CMS Policy and the Impact on Carriers Using Evidence-Based Medicare Set-Asides

The Center for Medicare Services (CMS) issued a Workers' Compensation Medicare Set-Aside (WCMSA) update on January 10, 2022 that could significantly impact carriers who utilize non-CMS approved Set-Aside products.

All parties to a workers' compensation matter must reasonably consider Medicare's interests when settling a workers' compensation matter. Previous memoranda published by CMS have guided parties submit a formal Medicare Set-Aside to CMS for a determination as to whether the parties have reasonably considered Medicare's interests in the following scenarios:

1. When a workers' compensation claimant is a Medicare beneficiary and their claim settles for over \$25,000, and
2. When there is a reasonable expectation that a workers' compensation claimant will be eligible for Medicare within 30 months and the claim settles for over \$250,000.

In recent years, our industry has seen the emergence of parties utilizing Evidence-Based Medicare Set-Asides that are not submitted to CMS even in cases where review threshold guidelines are met. On January 21, 2022, CMS published a memorandum stating that "unless a proposed amount is submitted, reviewed and approved...prior to settlement...CMS will deny payment for medical services related to workers' compensation injuries or illness requiring attestation of appropriate exhaustion equal to the total settlement less procurement costs before CMS will resume primary payment obligation for settled injuries or illnesses."

This appears to be a noteworthy change to the manner by which CMS views Evidence-Based Medicare Set-Asides. We recommend that you consult your preferred Medicare specialist in cases where settlement will trigger review threshold guidelines.

Questions? Please contact an [MGC attorney](#).

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