

A Second Bite at the WCMSA Apple?

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By Shannon P. Metcalf on May 24, 2023

The Centers for Medicare & Medicaid Services (CMS) Removes Maximum Time Limit to use Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) Amended Review Process

Do you have cases that you cannot settle due to an outdated, CMS-approved WCMSA? If so, there is good news as CMS has changed the Amended Review process to remove the maximum time limit for eligibility to use the Amended Review process.

Section 16.3 of the WCMSA Reference Guide (Version 3.9, dated May 15, 2023) provides an opportunity for WCMSAs to be re-reviewed where parties believe projected care has changed so much that the new proposed amount would result in a 10% or \$10,000 change (whichever is greater) in the amount approved by CMS. Previously, CMS limited this option to WCMSAs that had been approved by CMS no more than 72 months prior; however, CMS just removed the maximum time limit. So now, if you have an old WCMSA that was approved more than one year ago, an Amended Review request can be submitted to CMS to change the approved WCMSA amount, regardless of how long ago the WCMSA was approved by CMS. However, the following criteria must still be met:

1. An Amended Review for the WCMSA at issue has not already been requested (there is only one Amended Review allowed per WCMSA);
2. The requested change must result in the greater of a 10% or \$10,000 change in the previously approved amount. Please note the parties may request that the WCMSA recommendation be increased or decreased by 10%/\$10,000, whichever is greater; and
3. The medical portion of the case has not settled as of the date of the request for amended review.

We encourage you to take advantage of this expanded process and consider whether you have any old CMS-approved WCMSA cases that meet the criteria for Amended Review. Please contact Shannon Metcalf in Hedrick Gardner's Medicare Secondary Payer Practice Group if you would like to discuss the Amended Review option in greater detail, and see how it applies to some of your challenging cases!