

CMS Issues Major Change Impacting Zero-Dollar WCMSA Allocations!

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Medicare Set-Asides and
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By Shannon P. Metcalf on January 17, 2025

On January 17, 2025, CMS issued Version 4.2 of the Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide, [linked here](#). This guide provides guidance to the industry on the process used by CMS for approving proposed WCMSAs. Version 4.2 provided several important updates.

Effective July 17, 2025, CMS will no longer accept or review WCMSA proposals with a zero-dollar (\$0) allocation. CMS advises entities to consider the following parameters in determining whether a zero-dollar WCMSA allocation is appropriate and maintain documentation to support that allocation. Specifically, A WCMSA is not necessary if the facts of the case must demonstrate the injured worker is only being compensated for past medical expenses AND there is no evidence the individual is attempting to maximize the other aspects of the settlement to Medicare's detriment. These conditions can be demonstrated through one of the following:

- The injured worker's treating physician documents in medical records that to a reasonable degree of medical certainty the injured worker will no longer require any treatments or medications related to the settling WC injury or illness; or
- The workers' compensation insurer or self-insured employer denied responsibility for benefits under the state workers' compensation law and the insurer or self-insured employer has made no payments for medical treatment or indemnity (except for investigational purposes) prior to settlement, medical and indemnity benefits are not actively being paid, and the settlement agreement does not allocate certain amounts for specific future or past medical or pharmacy services as a condition of settlement; or
- A Court/Commission/Board of competent jurisdiction has determined, by a ruling on the merits, that the workers' compensation insurer or self-insured employer does not owe any additional medical or indemnity benefits, medical and indemnity benefits are not actively being paid, and the settlement agreement does not allocate certain amounts for specific future medical services; or
- The workers' compensation claim was denied by the insurer/self-insured employer within the state statutory timeframe allowed to pay without prejudice (if allowed in that state) during investigation period, benefits are not actively being paid, and the settlement agreement does not allocate certain amounts for specific future medical services.

Certainly, if any conditional payments were made prior to settlement for injury-related treatment then Medicare needs to be paid back by the injured worker. Also, Medicare has advised it will not pay for any injury-related treatment furnished prior to the date of the settlement for which it has not already paid.

CMS will not issue "verification letters" stating a WCMSA is not necessary, so parties will not be

able to attempt submission of a \$0 WCMSA to CMS just to obtain correspondence for their file noting no WCMSA is necessary. **If the above conditions are met, the parties should document the details in their files and the settlement documents, reference the January 17, 2025, Version 4.2, Section 4.2 of the WCMSA Reference Guide, and feel confident settling the case without approval of a \$0 WCMSA by CMS.**

Another change to the Reference Guide was within Section 9.4.3. CMS confirmed its WCMSA review contractor relies on the injured worker's past use and future recommended treatment supported by the medical records in making its WCMSA determination. They will take into consideration evidence-based guidelines and peer-reviewed medical literature for prescription medication and medical treatment allocations, but reiterated those are guidelines, not rules. CMS confirmed the treating provider plans are given preference when the plans differ from evidence-based guidelines or peer-reviewed medical literature.

Finally, CMS corrected example calculations for replacements of intrathecal pumps, spinal cord stimulators, and peripheral nerve stimulators. Those example calculations can be found in Section 9.4.5.

Hedrick Gardner will continue to monitor any updates in this regard and will provide additional information when available. Please contact Shannon Metcalf with questions regarding this notice or for any other Medicare inquiries.