



2014 Annual Issues Symposium

Medicare Set-Asides and Workers Compensation

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Orlando, Florida

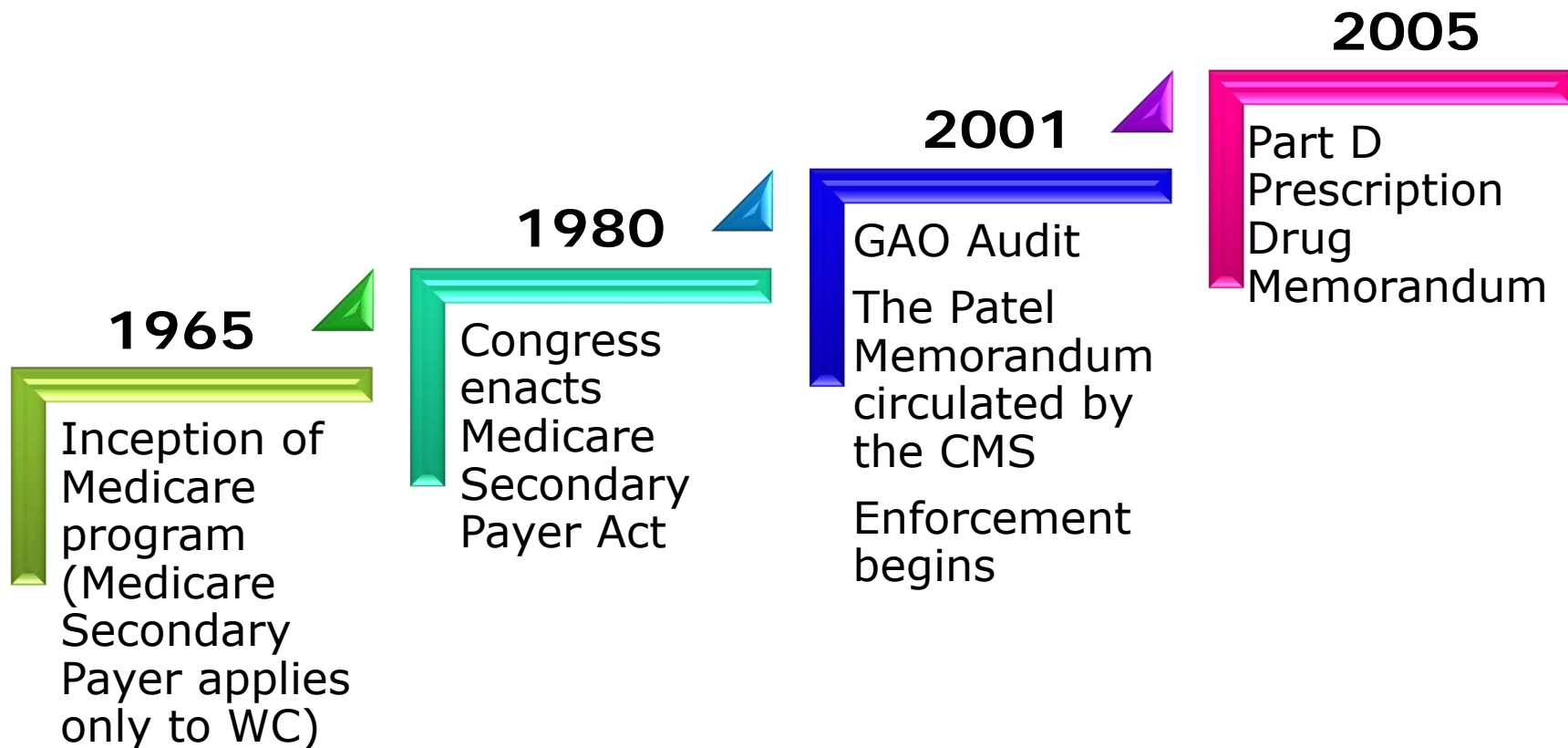


Background

- Medicare is a secondary payer for medical services for work-related injuries
- A Medicare Set-Aside (MSA) is a fund established to pay medical costs to treat a work-related injury that might otherwise be paid by Medicare
- For settlements meeting certain thresholds, the Centers for Medicare & Medicaid Services (CMS) will review the proposed MSA
- An MSA can be self-administered or professionally administered
- In FY 2011, CMS approved \$1.1 billion of workers compensation (WC) MSAs*

*US Government Accountability Office (GAO), *Medicare Secondary Payer—Additional Steps Are Needed to Improve Program Effectiveness for Non-Group Health Plans*, GAO-12-333, March 2012, Table 4, p. 20

Medicare Is Secondary Payer to Workers Compensation



CMS's MSA Process Changes

The substantive memoranda issued by CMS are best classified as interpretive rule-making efforts. With an interpretive rule, there is no requirement to comply with the public notice and comment procedures outlined in the Administrative Procedures Act.

2006

Increased dollar threshold for Medicare beneficiaries from \$10K to \$25K

2009

CMS prescription drug update and pricing methodology

2012

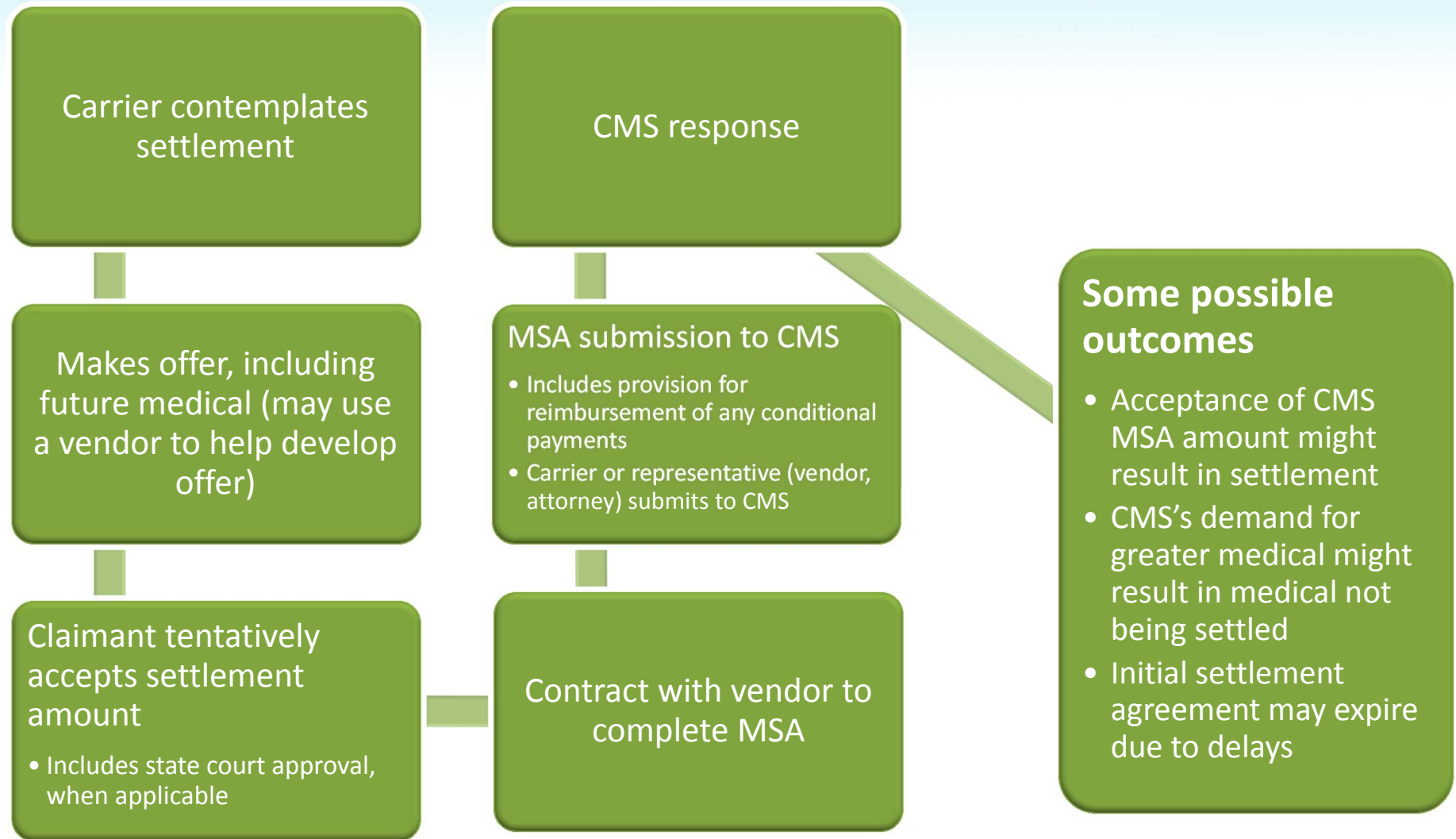
New provider to review and approve MSAs
Medicare Advantage Plans can recover

2013

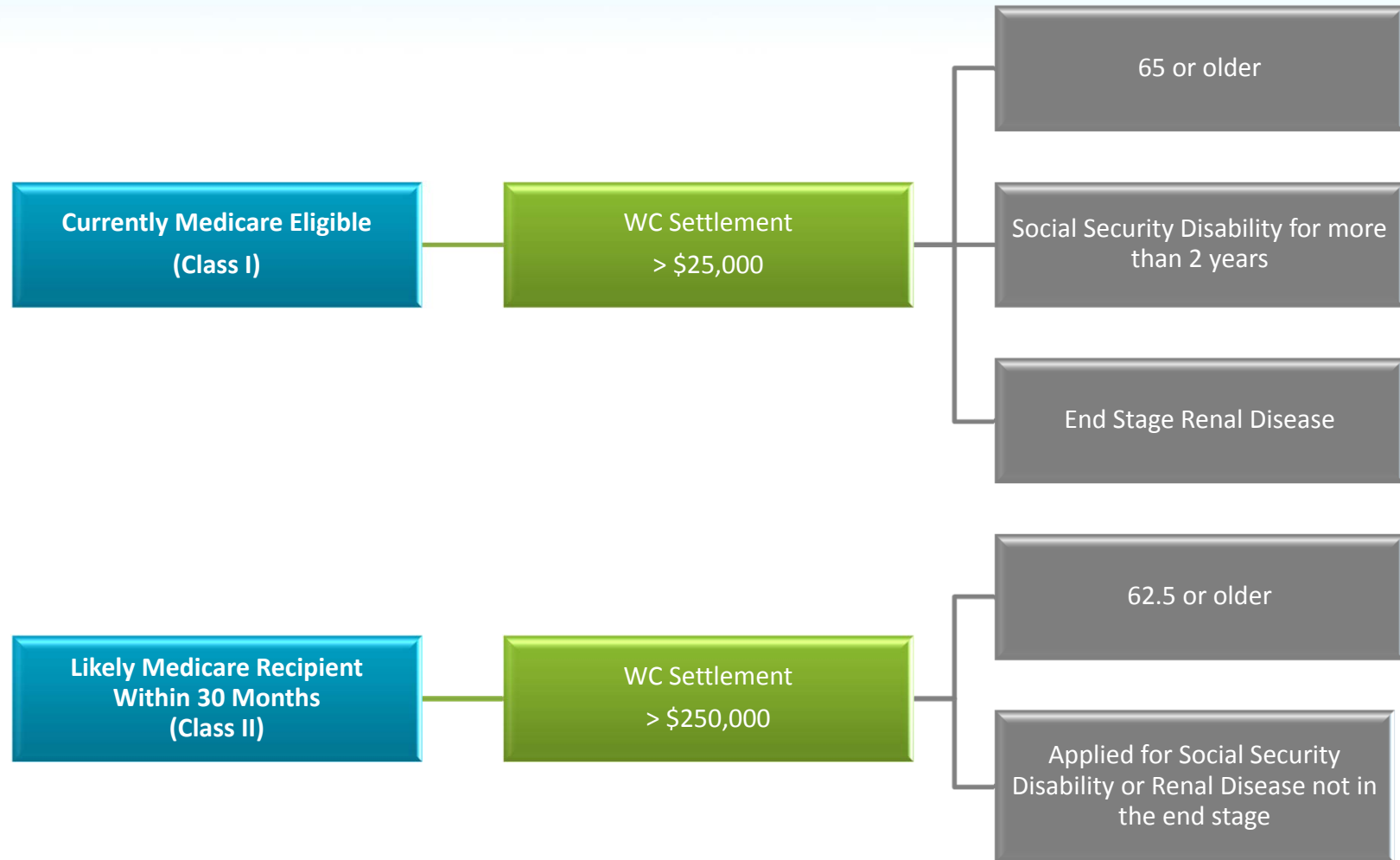
The SMART Act*

*The Strengthening Medicare and Repaying Taxpayers (SMART) Act simplifies processes for reimbursing CMS for conditional payments made by Medicare

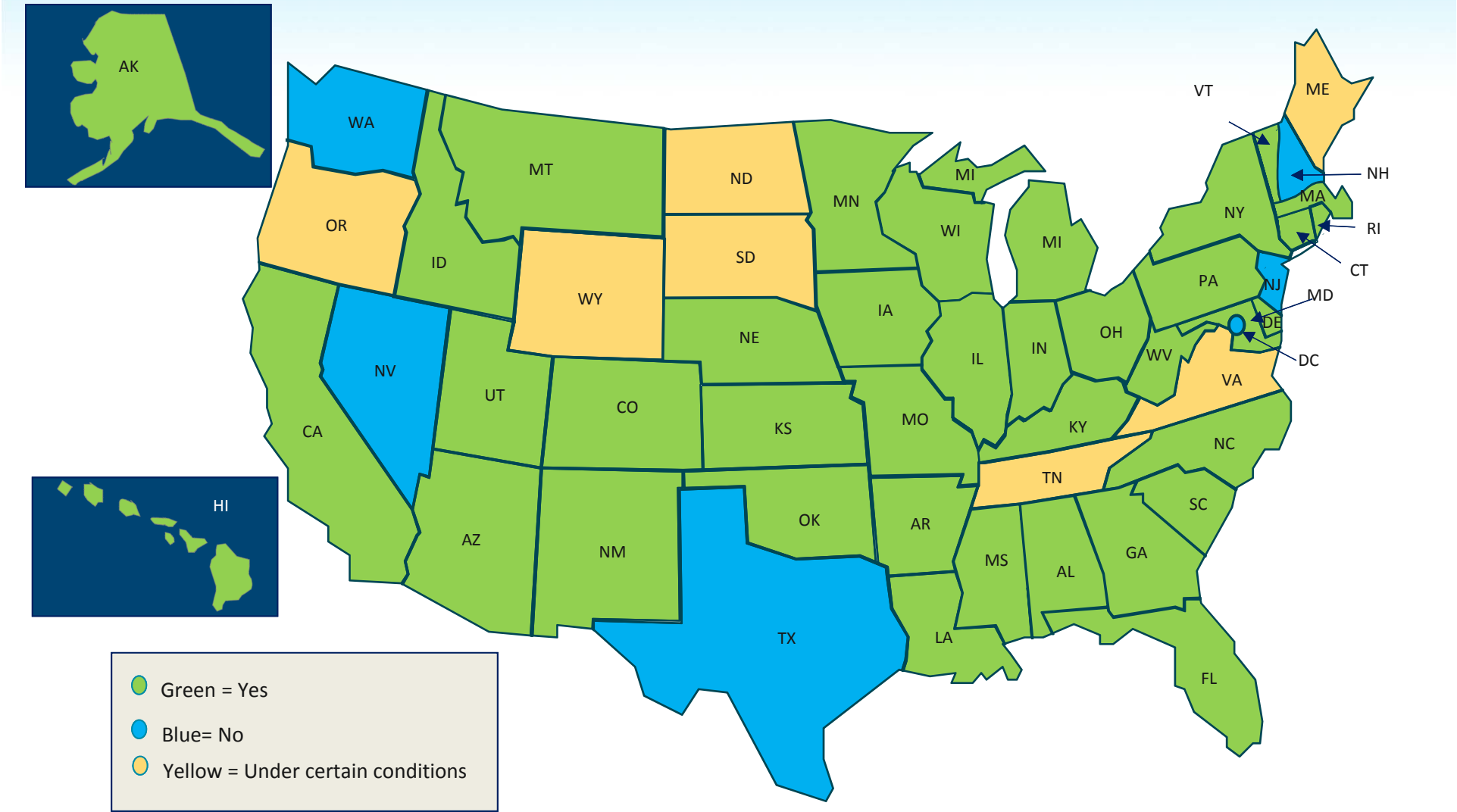
Illustrative MSA Process Scenarios



CMS Workers Compensation Review Thresholds



Most States Allow Settlement of WC Medical



Medicare Set-Aside Sample Data Provided by Gould & Lamb

- Gould & Lamb is an MSA service provider
- The sample provided to NCCI contains approximately 2,200 completed MSAs between January 2010 and November 2013
 - For CMS submissions between September 2009 and November 2013
- Sample includes
 - Proposed Total Settlement
 - Proposed MSA
 - Final MSA
- Proposed and Final MSAs include
 - Medicare Parts A and B—hospital, office visits, and related services
 - Medicare Part D—prescription drugs

NCCI Medical Data Call

- The NCCI Medical Data Call (MDC) captures transaction-level detail on medical bills processed on or after July 1, 2010, including dates of service, charges, payments, procedure codes, and diagnosis codes
- Carriers are not required to report transactions for services provided more than 30 years after the date of the injury
- NCCI collects the MDC for the 35 jurisdictions for which NCCI provides ratemaking services and for 8 additional states on behalf of the independent state rating organizations*

*The 35 jurisdictions for which NCCI provides ratemaking services are AK, AL, AR, AZ, CO, CT, DC, FL, GA, HI, IA, ID, IL, KS, KY, LA, MD, ME, MO, MS, MT, NE, NH, NM, NV, OK, OR, RI, SC, SD, TN, UT, VA, VT, and WV; the 8 independent bureau states for which NCCI collects the Medical Data Call are IN, MA, MI, MN, NC, NJ, NY, and WI

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Key Findings

- Most MSAs are for claimants who are Medicare entitled at the time of settlement
 - Most of these claimants are Medicare entitled because they have been on Social Security Disability for at least two years
- MSAs make up about 40% of the share of total proposed settlement
 - Half of this 40% is due to prescription drugs
- After a period of dramatic lengthening, CMS's MSA processing time has recently declined
- The ratio of CMS-approved MSA amounts to submitted MSA amounts has declined over time
- The differences between proposed and approved MSA settlements are largely due to prescription drugs



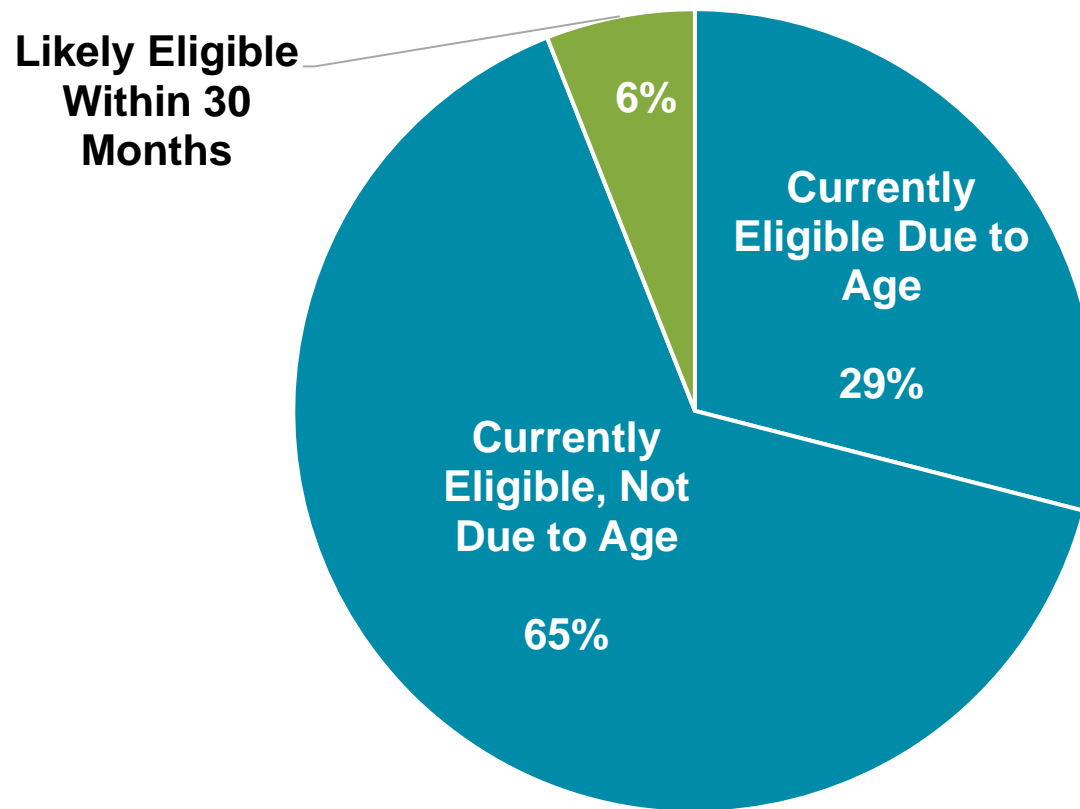
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MSA Demographics



Almost All MSAs Are for Claimants Who Are Medicare Entitled at the Time of Settlement

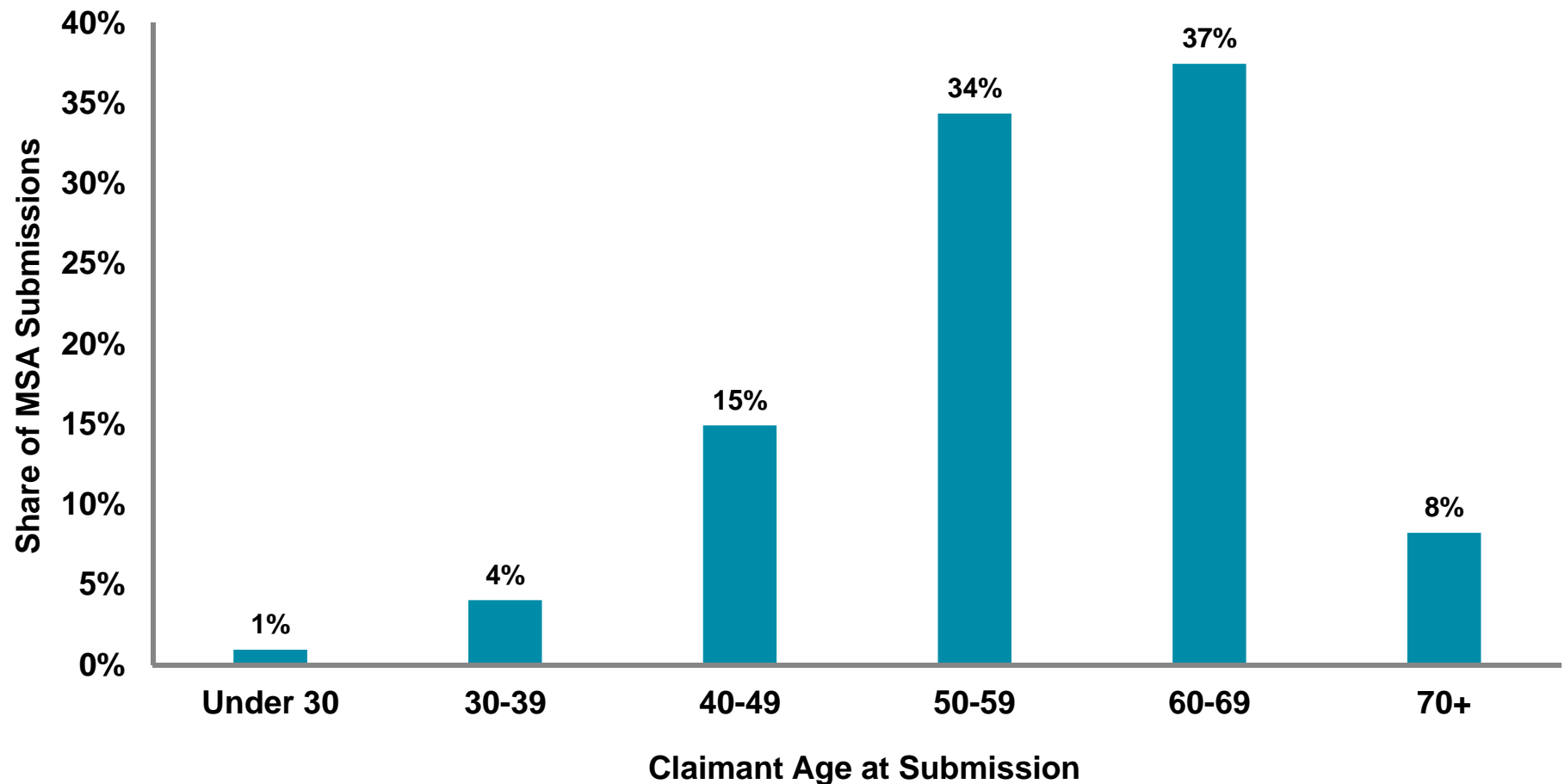
Distribution of MSA Submissions by Medicare Status



Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

The Majority of MSAs Reviewed by CMS Are for Claimants Between Ages 50 and 70

Distribution of Claimant Age at CMS Submission

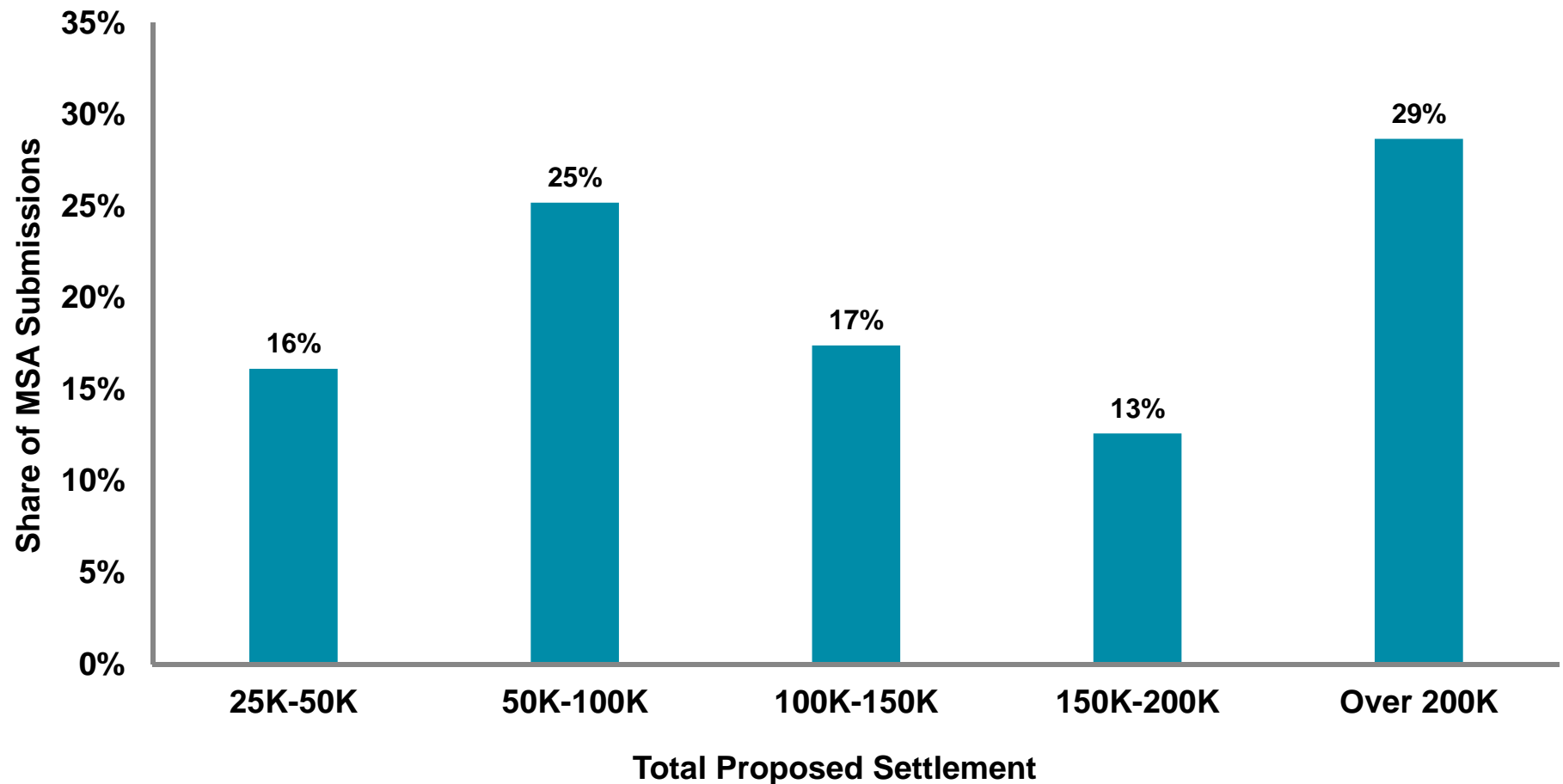


Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

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More Than Half of MSAs Reviewed by CMS Are for Settlements Over \$100K

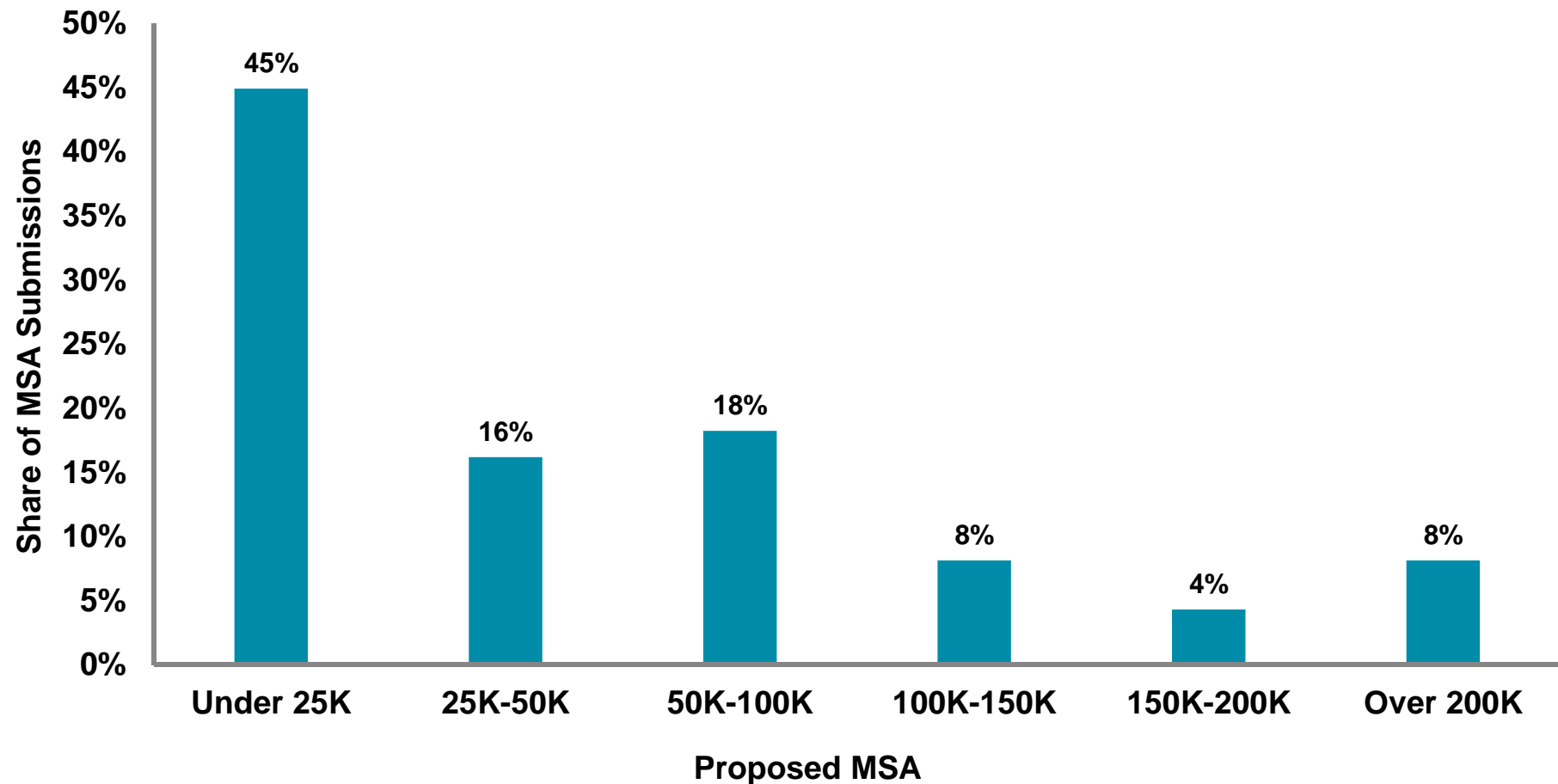
Distribution of Submissions by Total Proposed Settlement Size



Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

Almost Half of MSAs Reviewed by CMS Have MSA Amounts Under \$25K

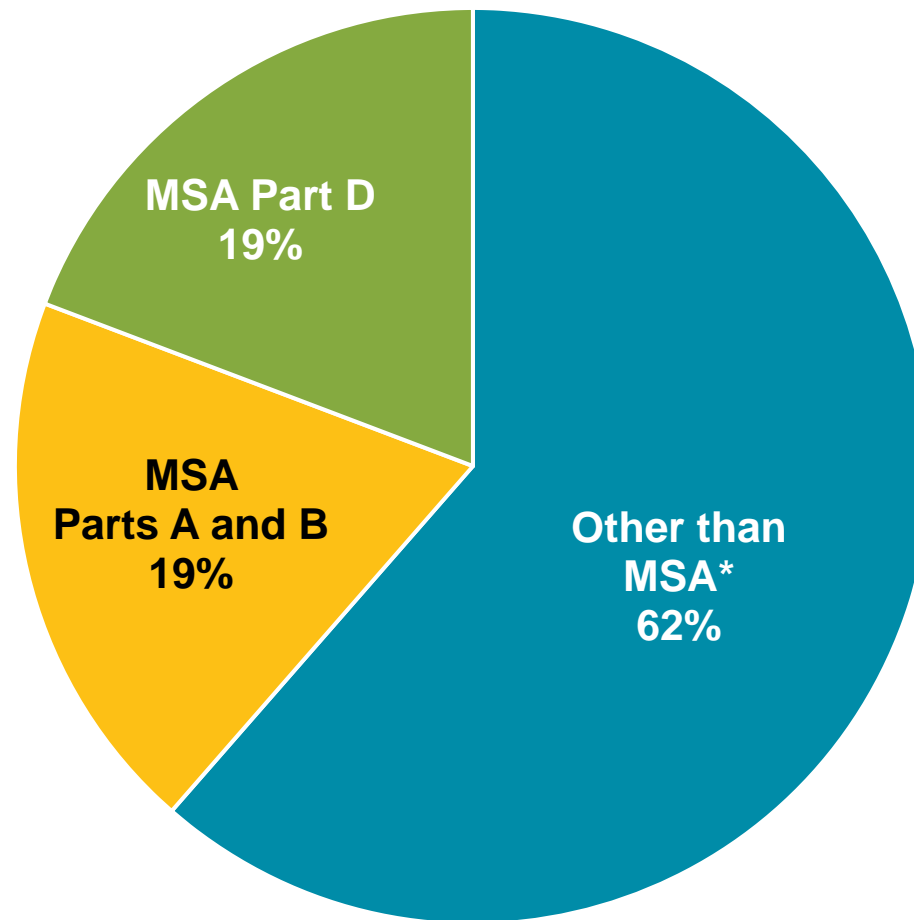
Distribution of Submissions by Proposed MSA Settlement Size



Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

MSAs Are About 40% of Proposed Total Settlement Costs

Half of Proposed MSA Costs Are for Prescription Drugs

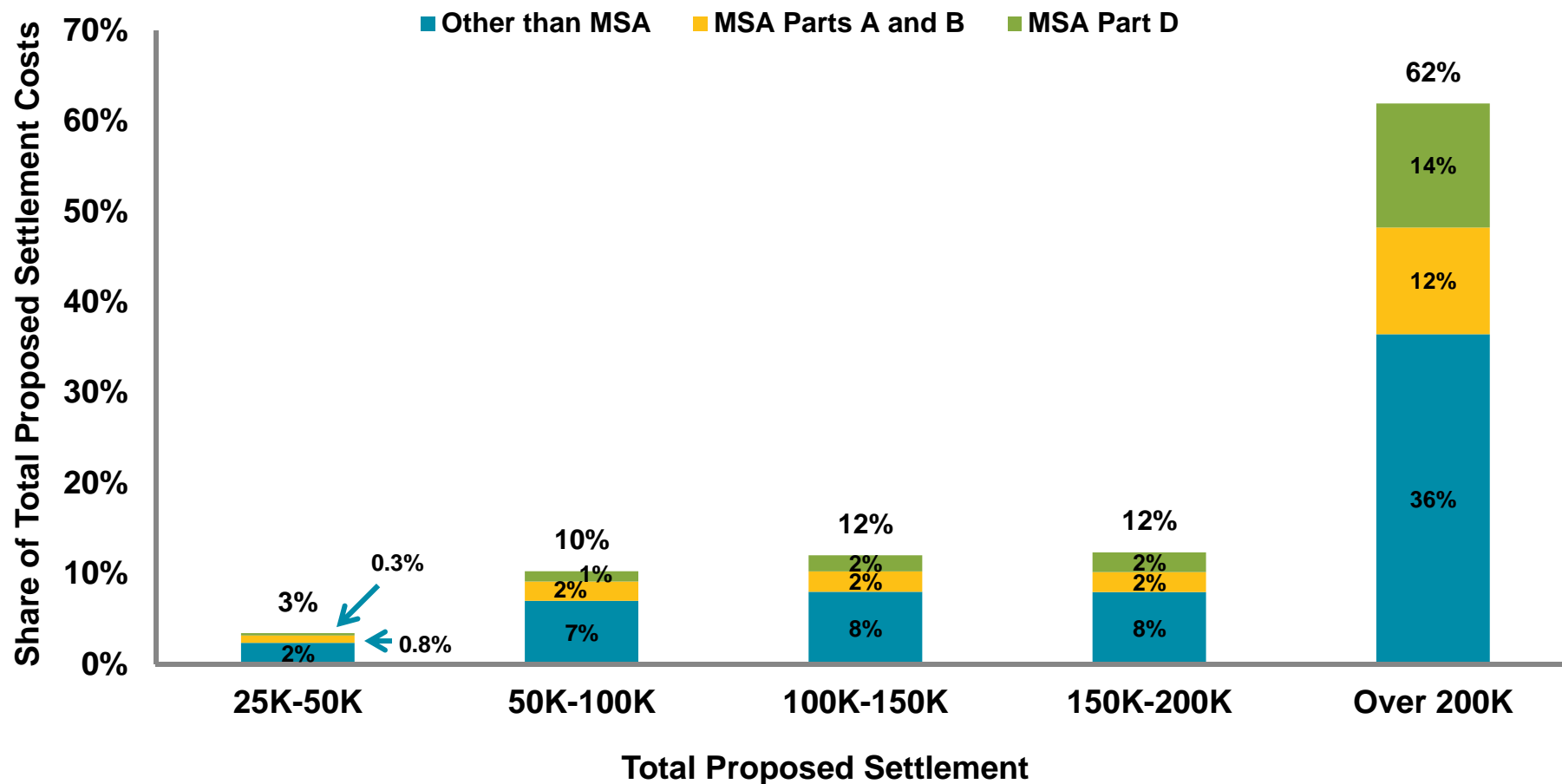


*"Other than MSA" includes indemnity, medical not covered by Medicare, and other expenses such as attorney fees
Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013
for submissions to CMS between September 2009 and November 2013

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Prescription Drugs Are Half of MSAs Across Most Proposed Settlement Sizes

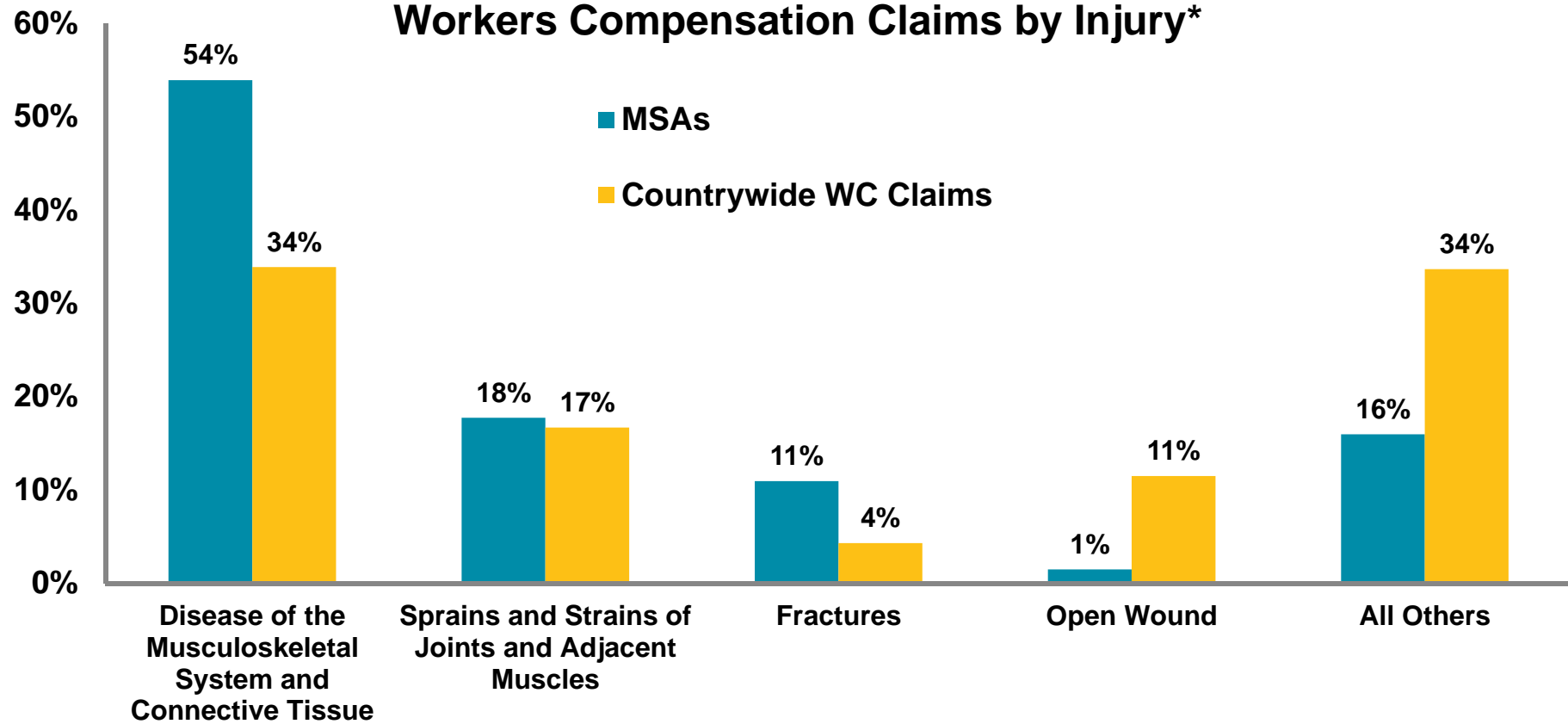
Total Proposed Settlement Cost Distribution



Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

Half of MSAs Reviewed by CMS Involve Musculoskeletal Impairments

Distributions of MSAs and Countrywide Workers Compensation Claims by Injury*

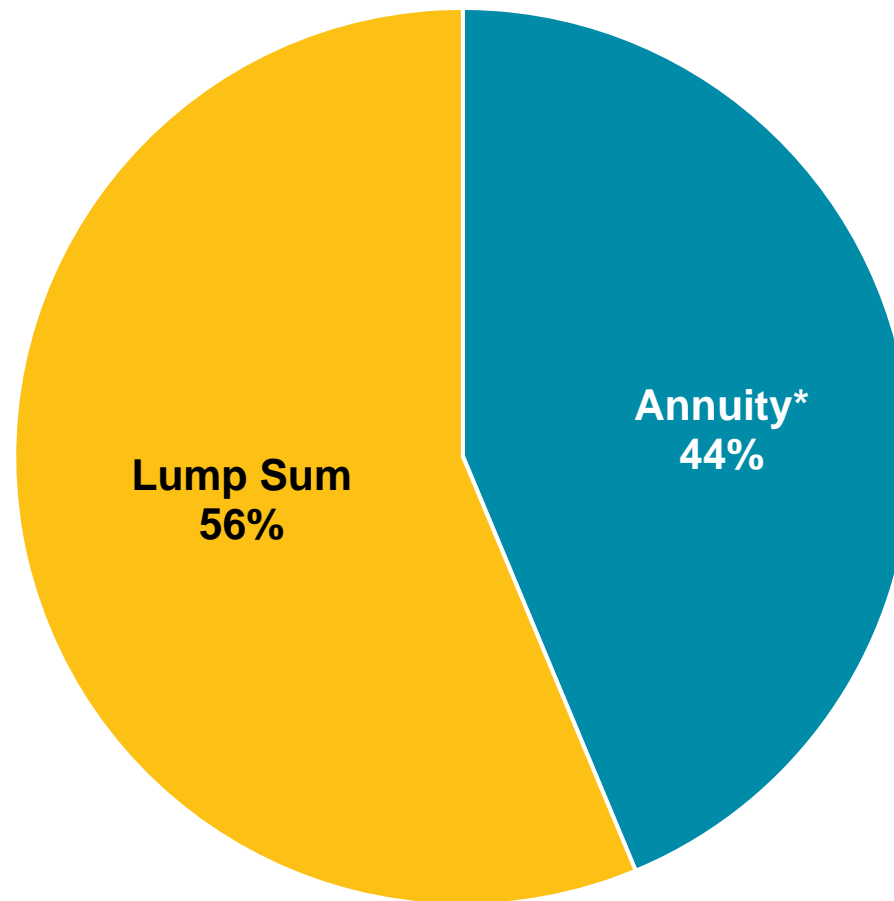


Injury—Based on Primary ICD9 Diagnosis Code

*Comparison restricted to states in common between NCCI's Medical Call Data and the MSA sample
Sources: NCCI Medical Data Call and Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

Most MSA Settlements Are Paid as a Lump Sum

Distribution of MSA Submissions by Funding Mechanism



*Settlement includes at least one annuity, in addition to any lump sum payments

Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

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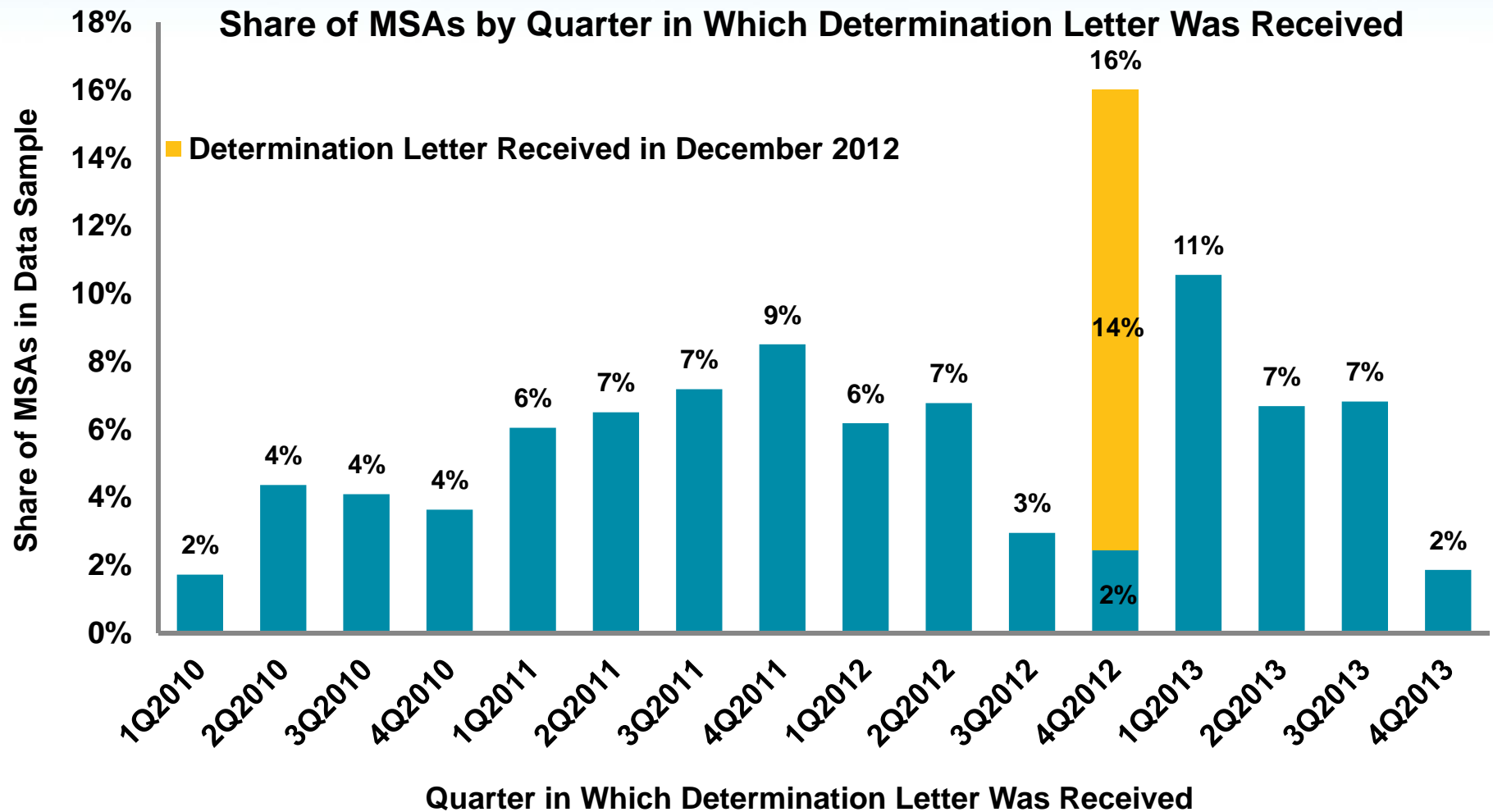


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Recent MSA Trends

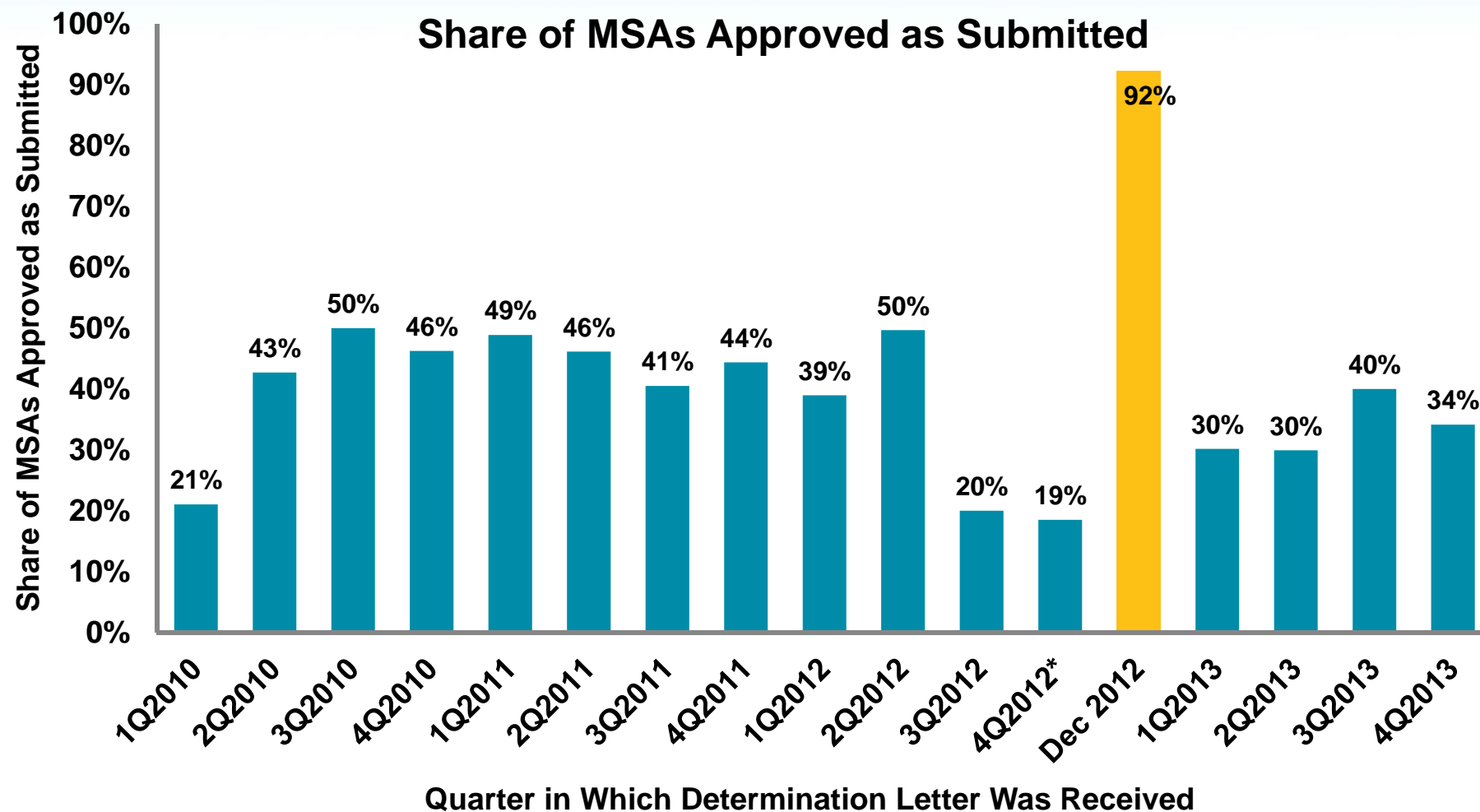


CMS Letters of Determination Surged in December 2012



Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

More Than 90% of MSAs Completed During December 2012 Were Approved as Submitted

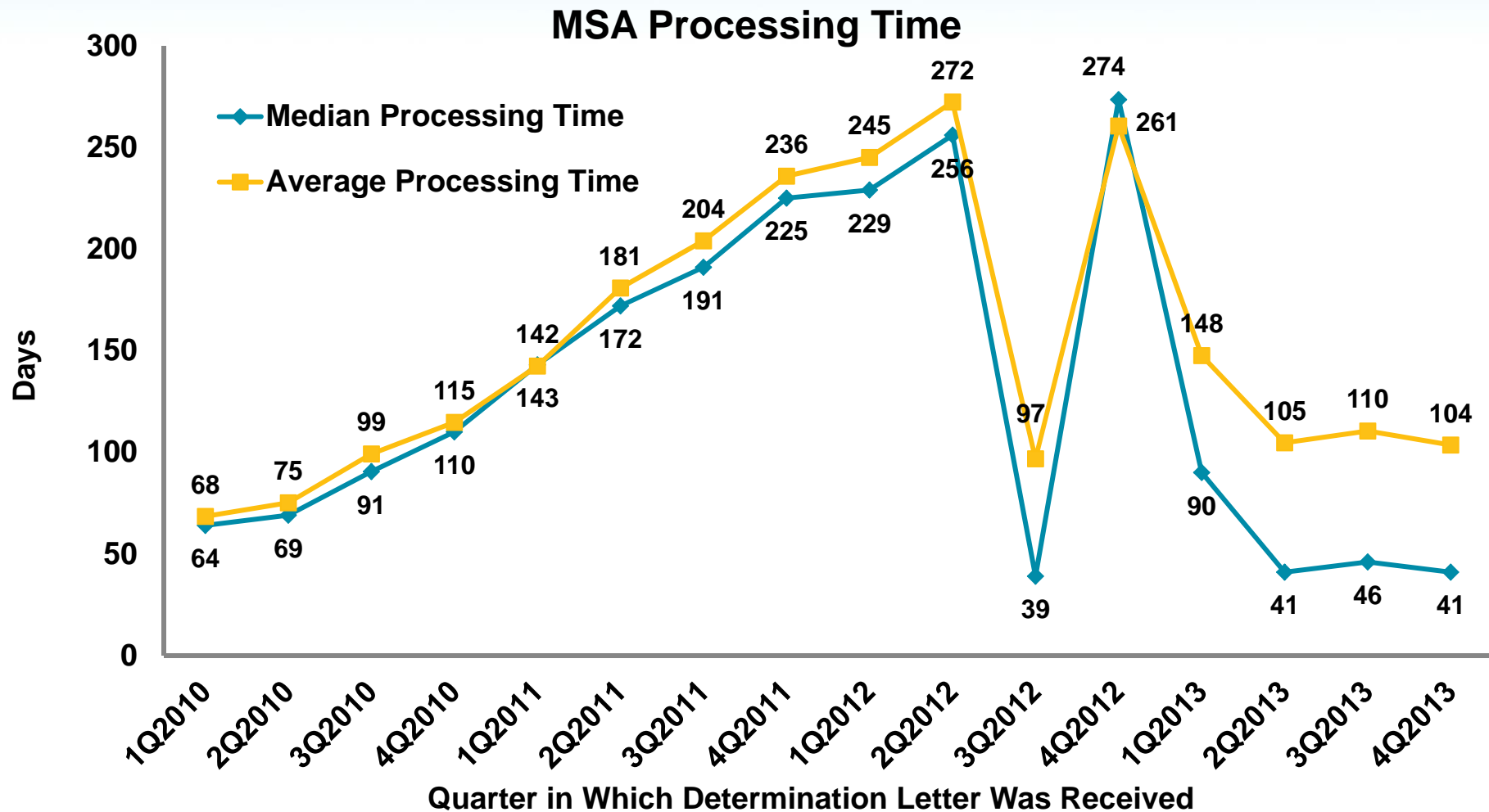


*Excluding December 2012; 4Q2012 approved as submitted share including December 2012 is 84%

Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

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After a Period of Dramatic Lengthening, CMS's MSA Processing Time Has Recently Dropped

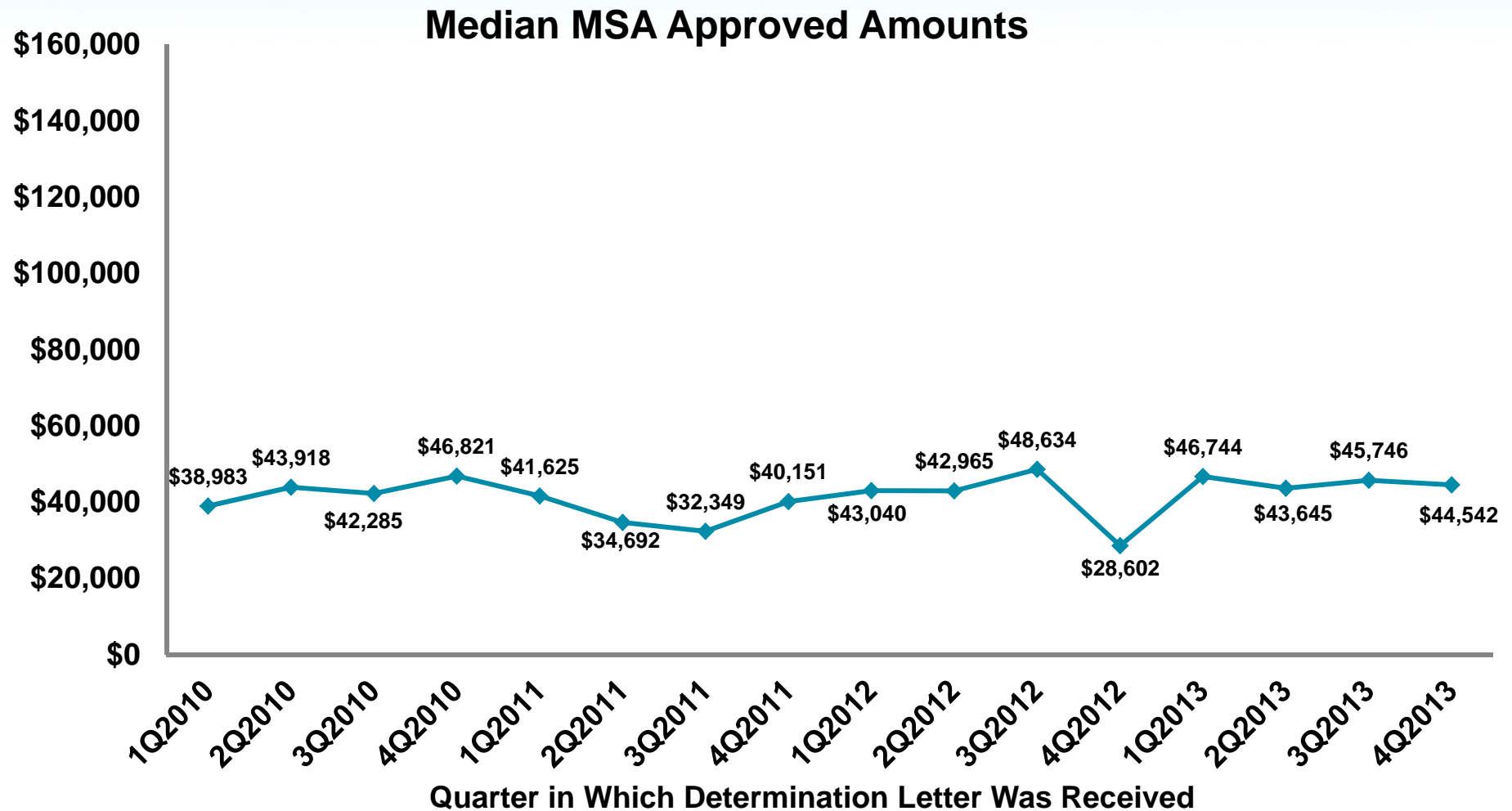


Processing time is days from submission of MSA to CMS to receipt of determination letter

Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

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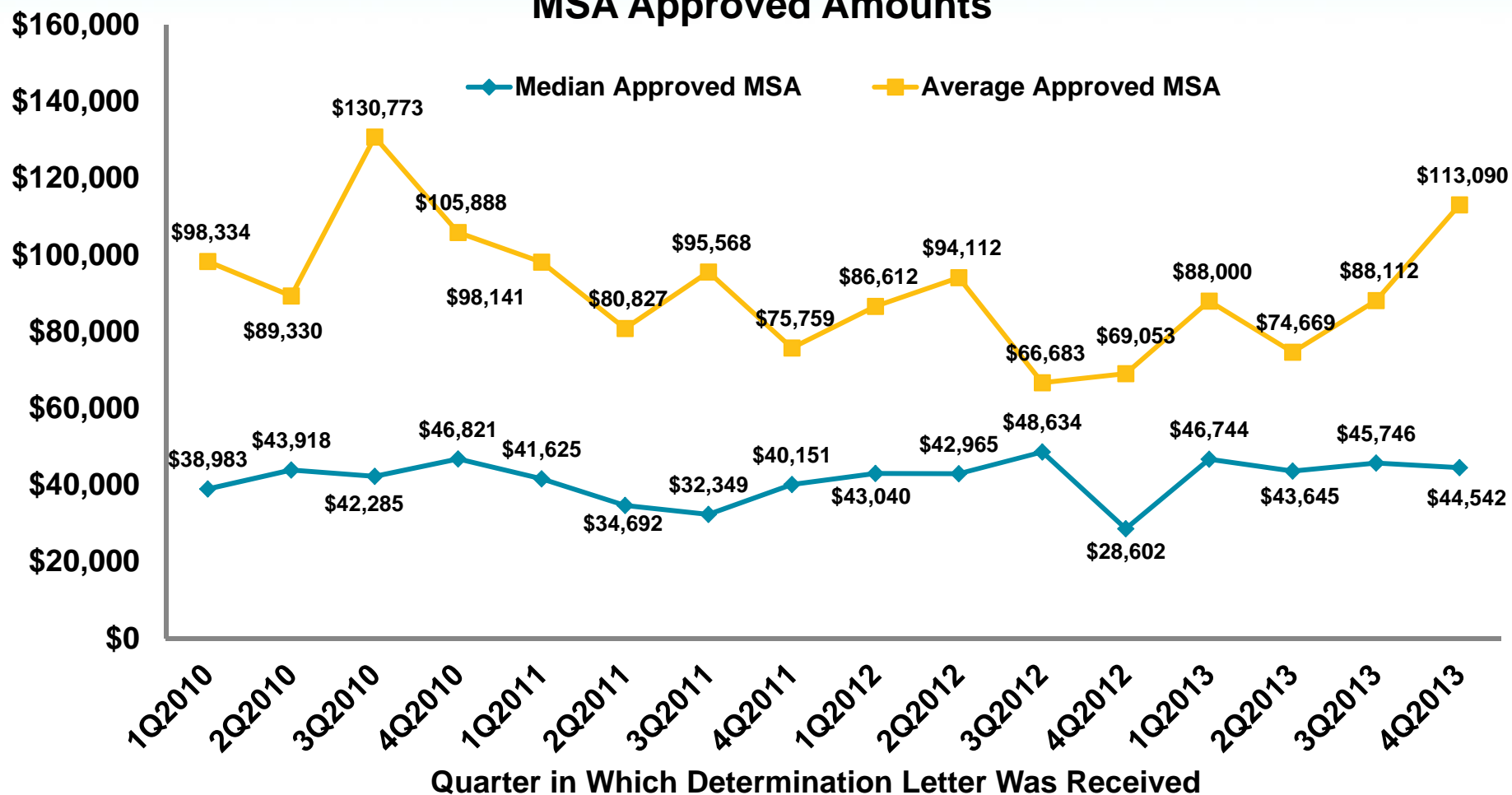
Median MSA Approved Amounts Have Been Stable Since 2010



Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

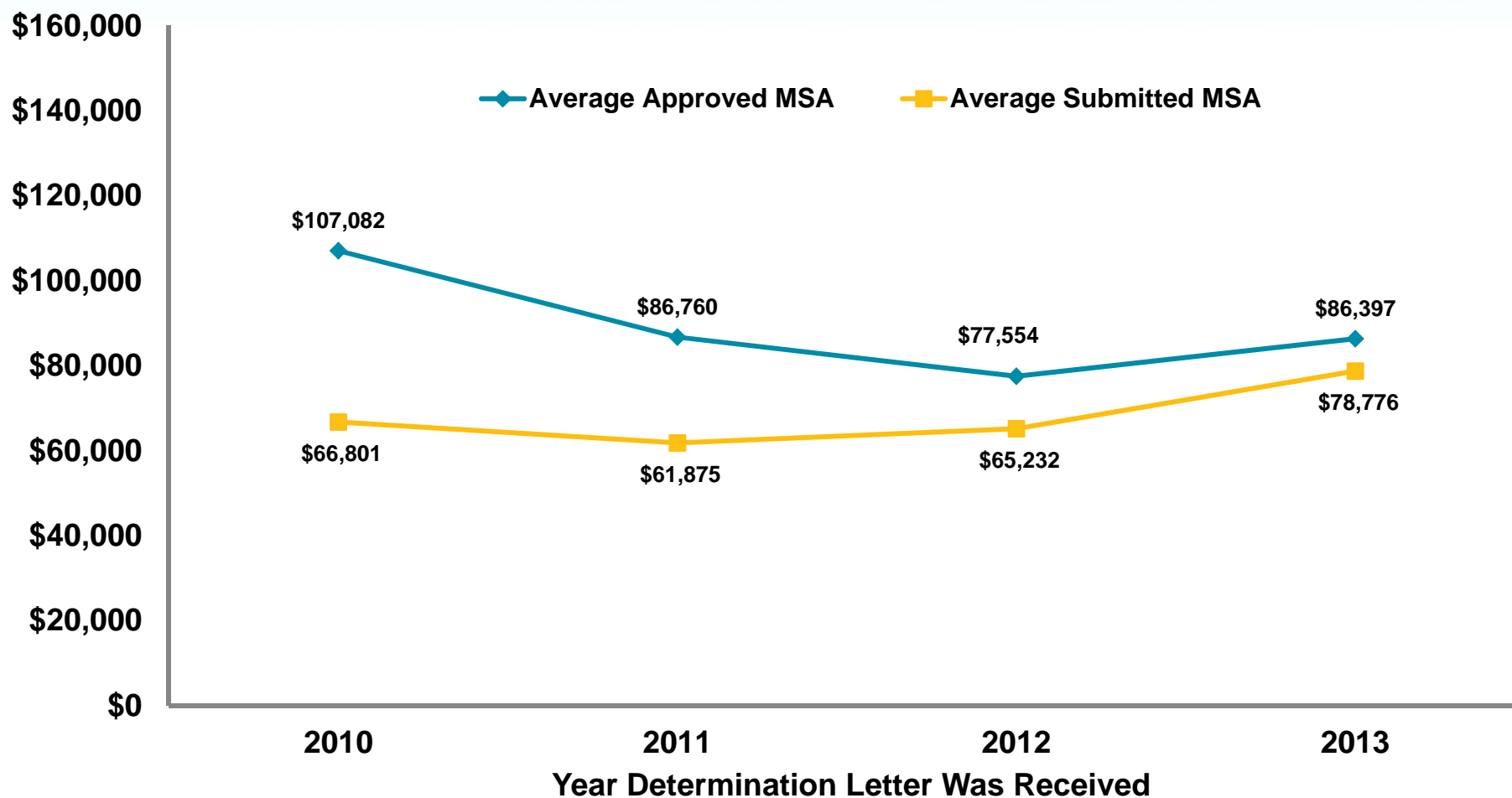
There Is No Apparent Trend in Average Approved MSAs

MSA Approved Amounts



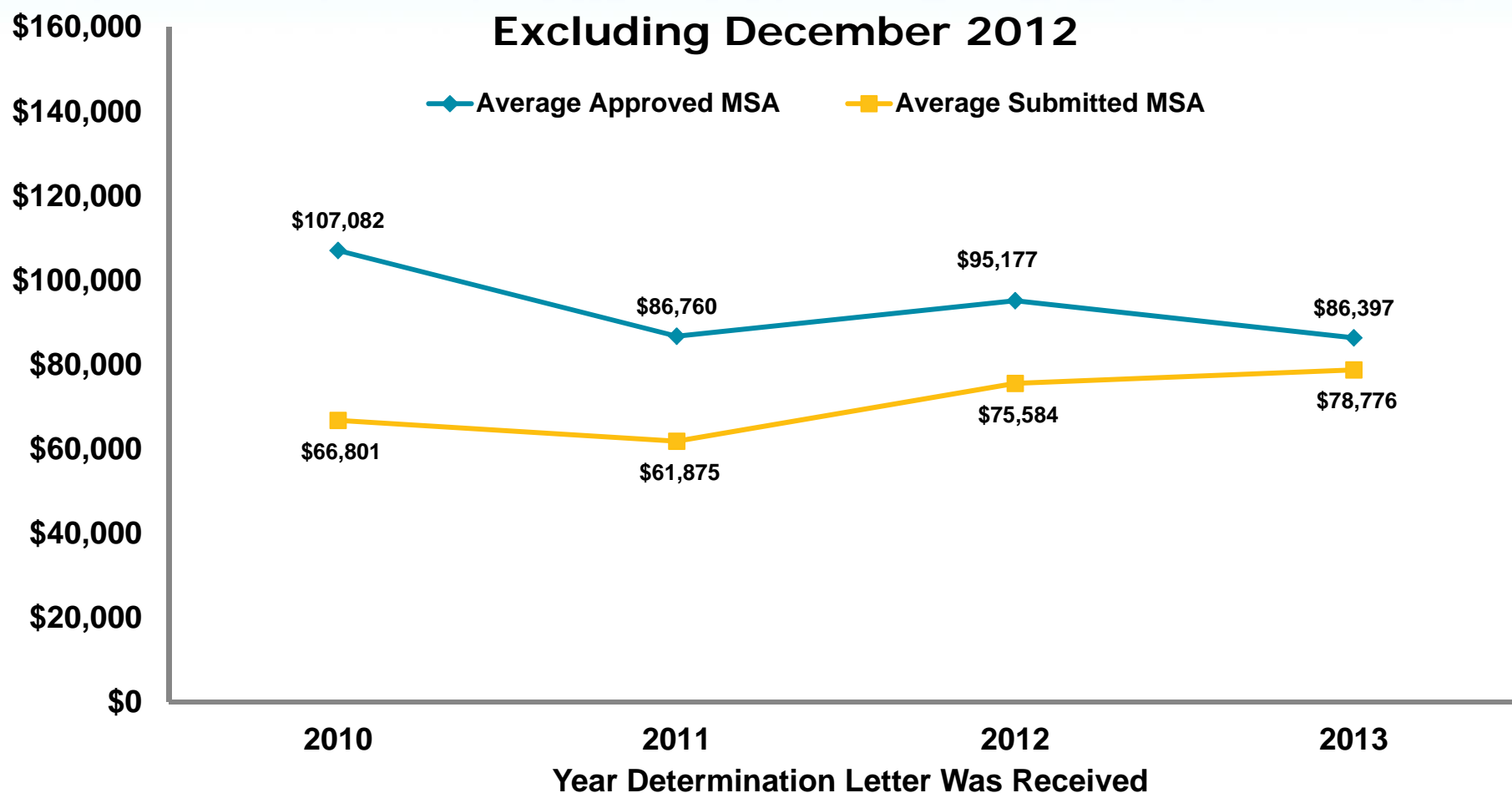
Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

Gap Between Submitted and Approved MSAs Is Shrinking



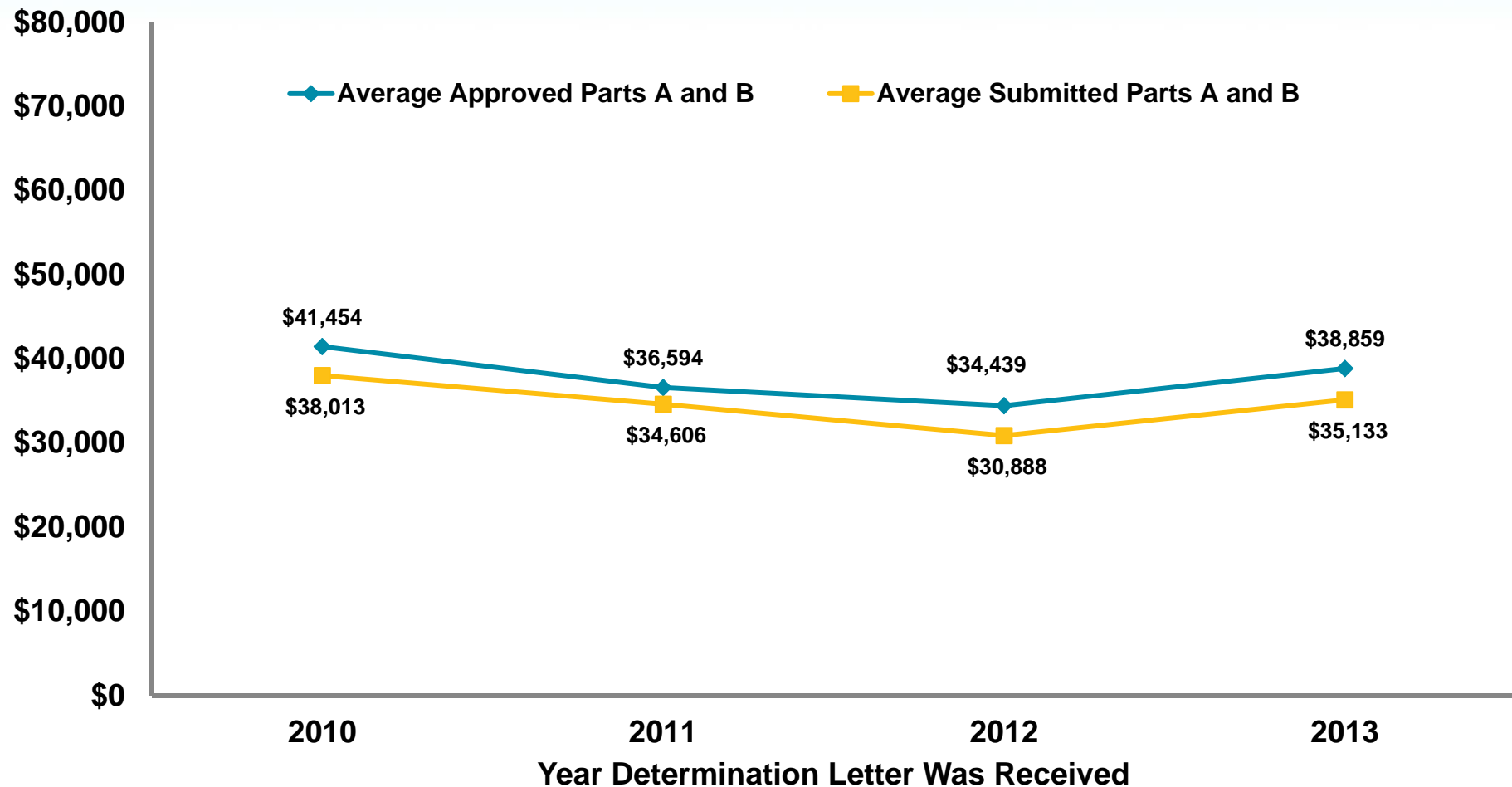
Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

Gap Between Submitted and Approved MSAs Is Shrinking



Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

The Gap Between Approved and Submitted MSAs for Parts A and B Has Been Fairly Stable



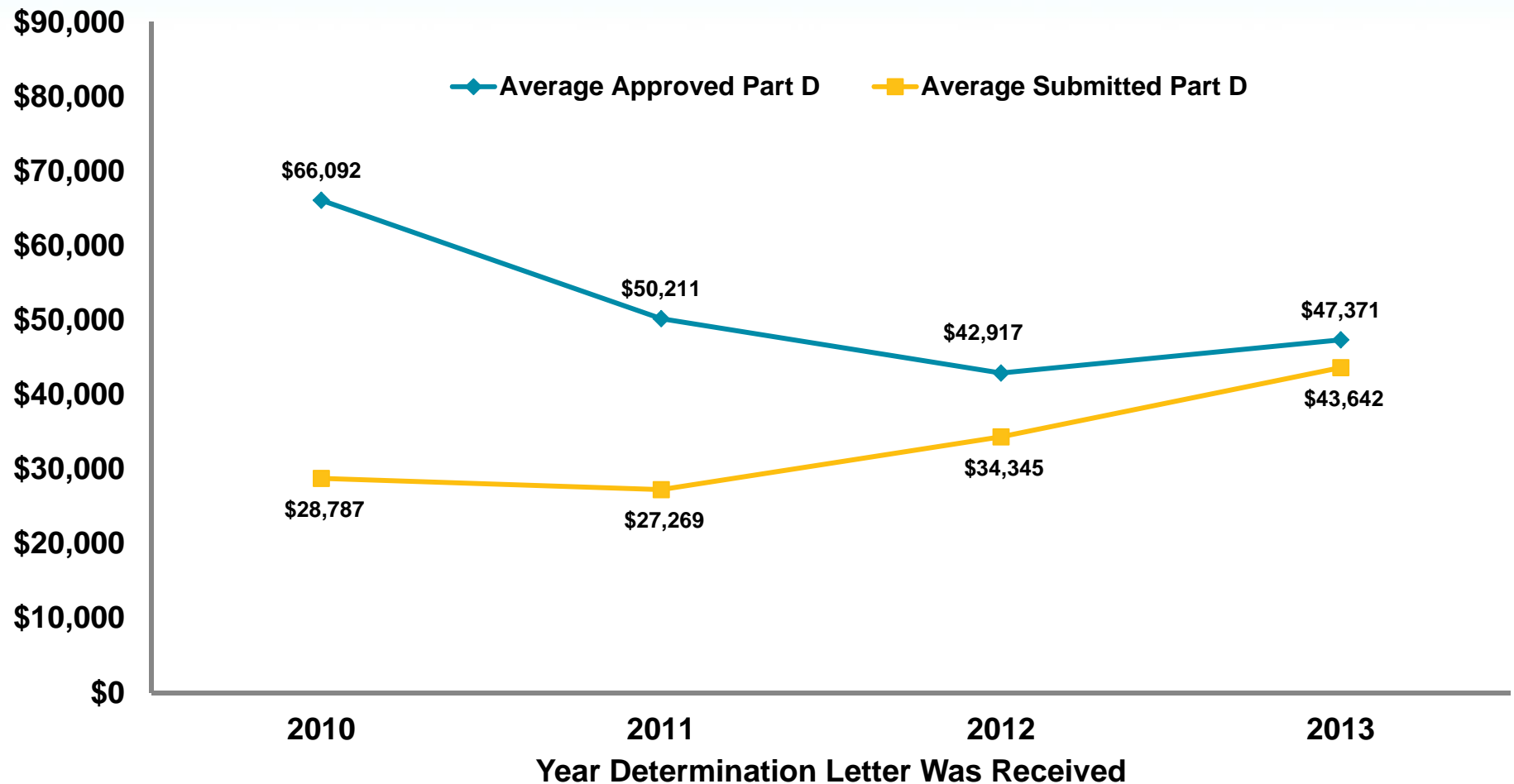
Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

The Gap Between Approved and Submitted MSAs for Parts A and B Has Been Fairly Stable



Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

The Gap Between Approved and Submitted MSAs for Drugs Has Declined Significantly



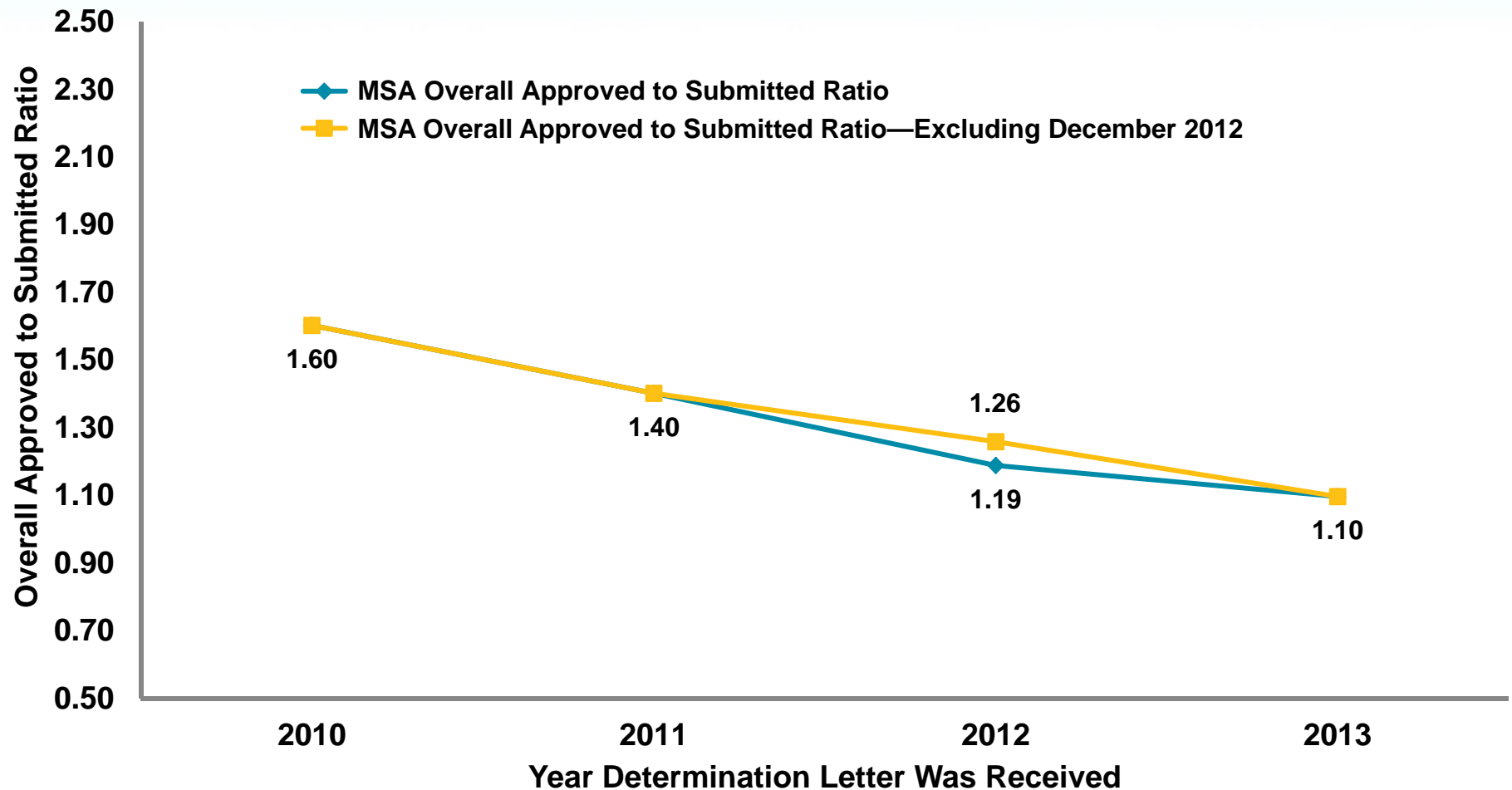
Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

The Gap Between Approved and Submitted MSAs for Drugs Has Declined Significantly



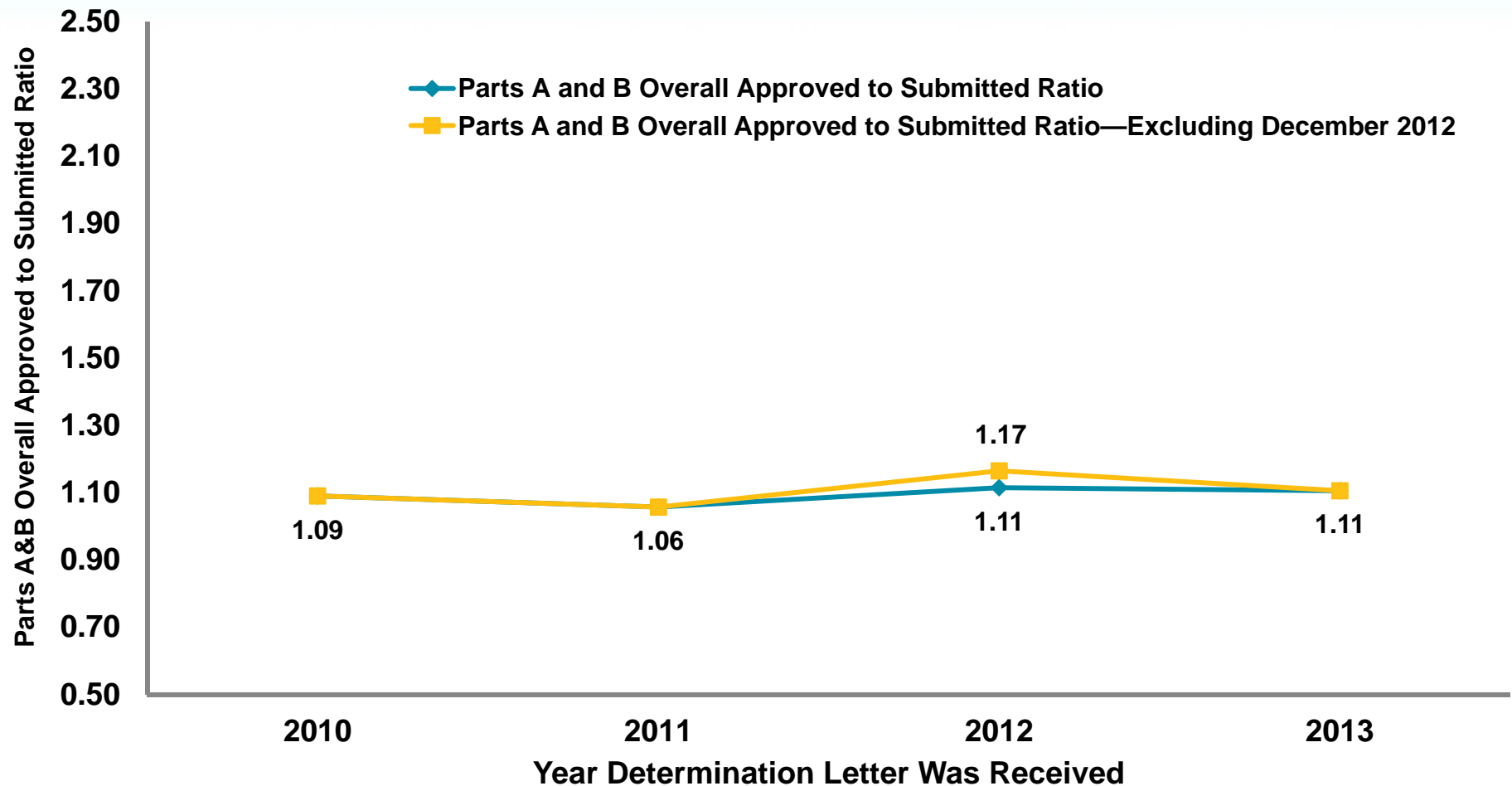
Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

The Ratio of Overall Approved to Submitted MSAs Has Declined Over Time



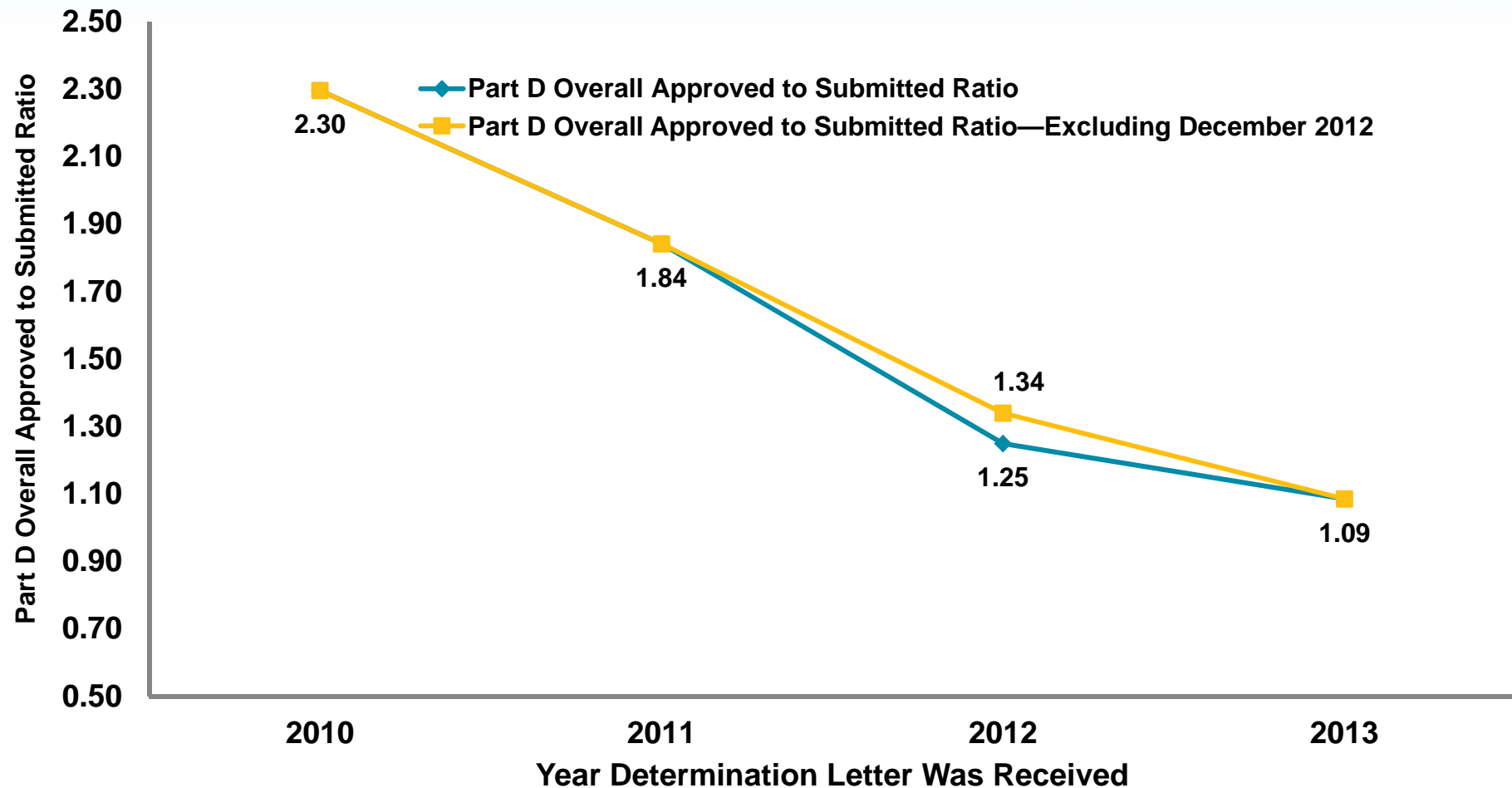
Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

Ratio of Overall Approved to Submitted MSAs for Parts A and B Has Been Fairly Stable



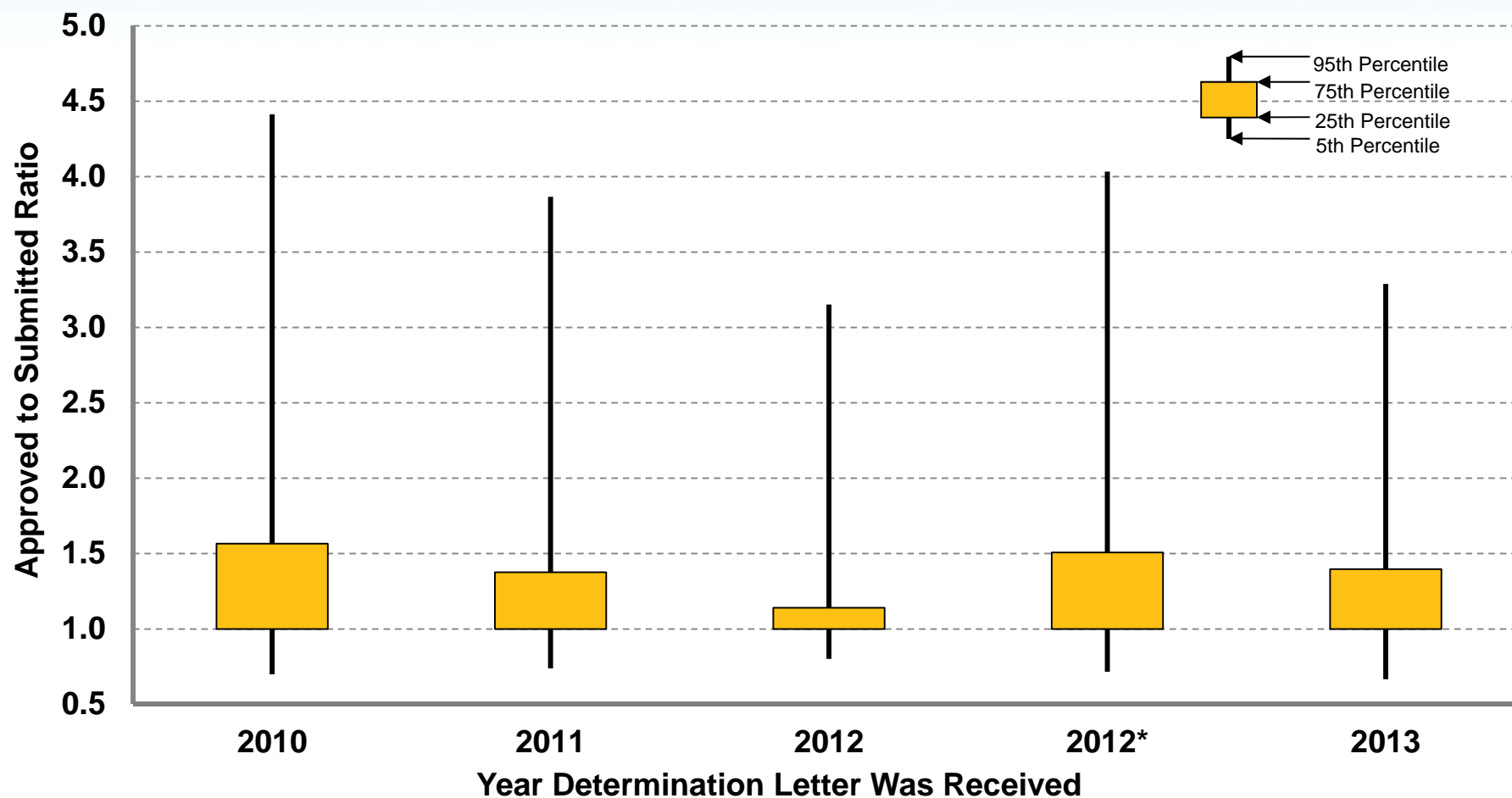
Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

Ratio of Overall Approved to Submitted MSAs for Drugs Has Declined Sharply



Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

The Spread of MSA Approved to Submitted Ratios Has Been Consistent



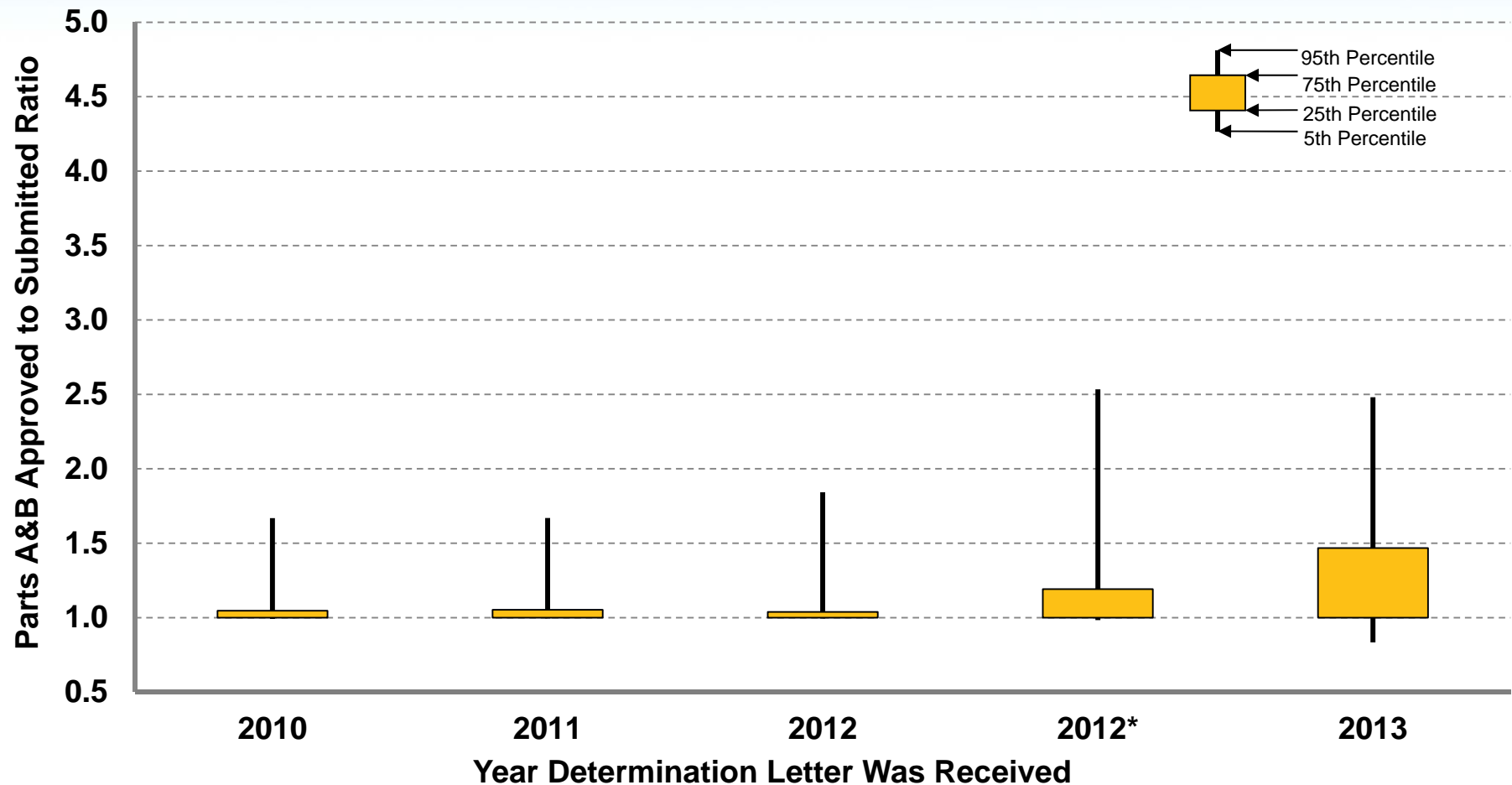
Median is 1.00 for all years

*Excluding December 2012

Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

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The Spread of Approved to Submitted Ratios for Parts A and B Has Grown



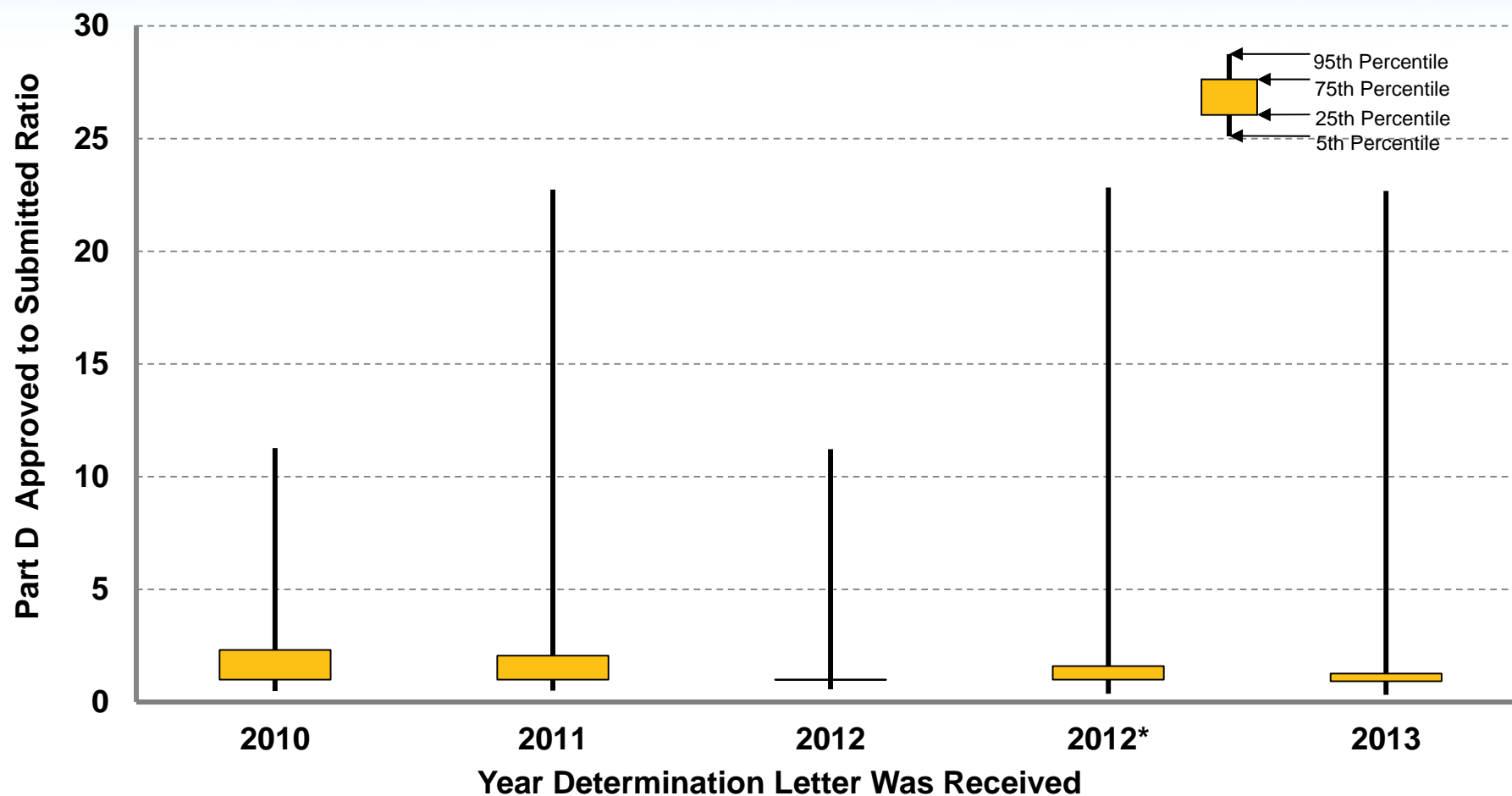
Median is 1.00 for all years except 2013, for which it is 1.07

*Excluding December 2012

Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

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Most of the Spread of MSA Approved to Submitted Ratios Is Due to Drugs



Median is 1.00 for all years

*Excluding December 2012

Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

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Closing Remarks

- The majority of MSAs are for claimants who are Medicare entitled due to disability
- MSAs are a large share of total proposed settlements
- Prescription drugs are a large share of MSAs
- CMS's MSA processing time has recently declined
- The differences between proposed and approved MSAs have declined over time
- Most differences between proposed and approved MSAs have been due to prescription drugs



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Thank You





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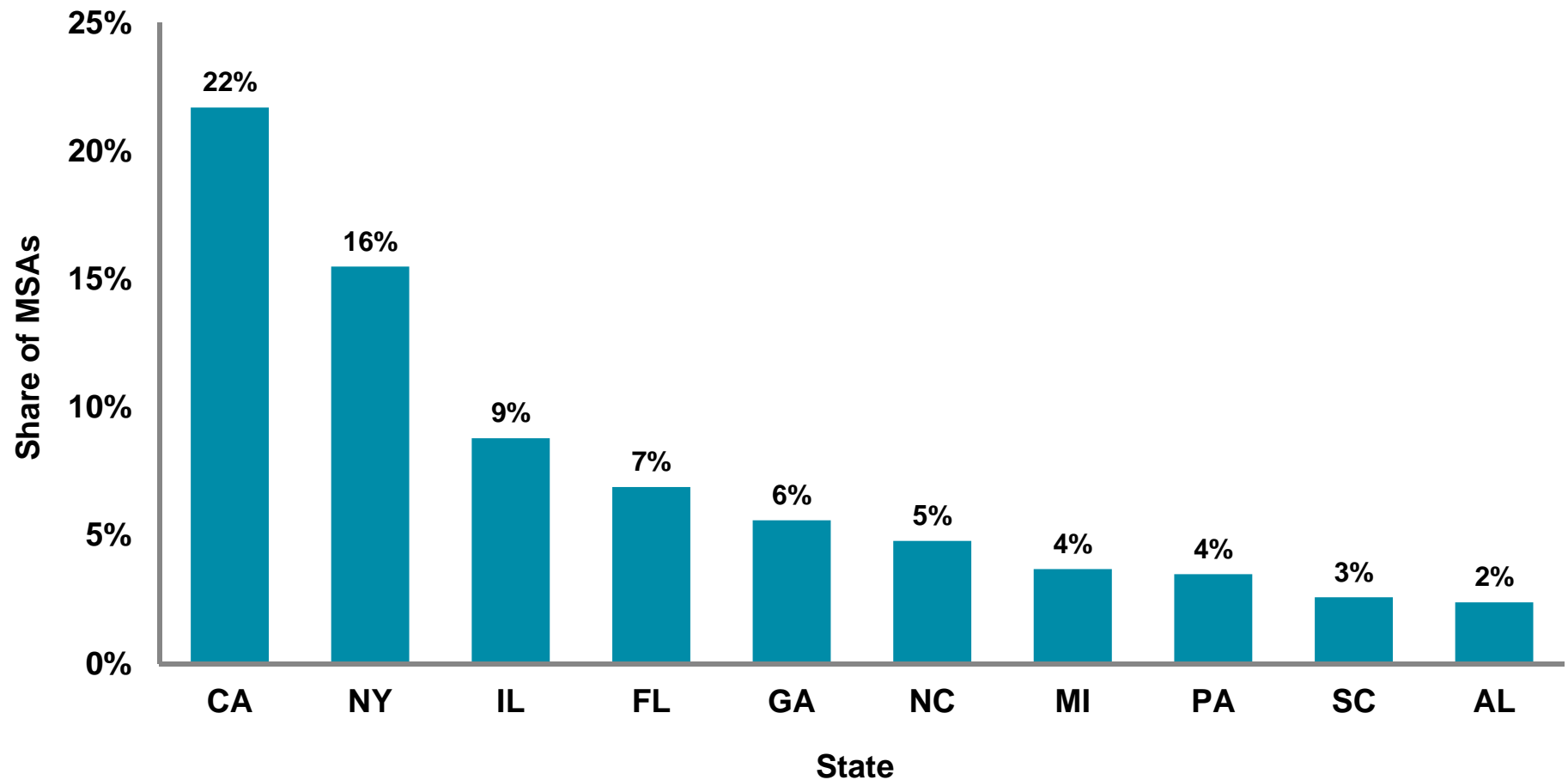
Appendix

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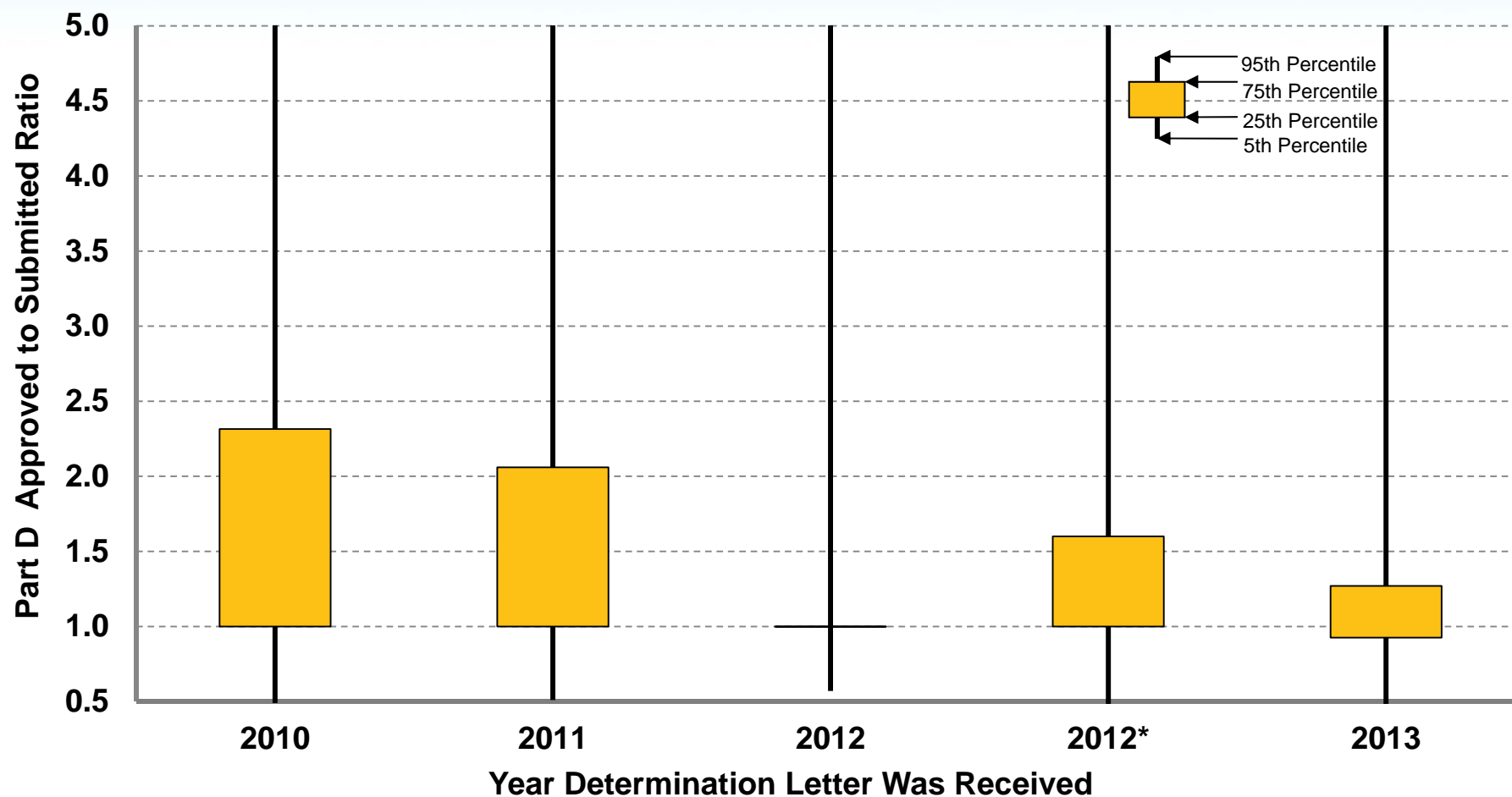
Top Ten MSA Volume States in Sample

Distribution of MSAs by State



Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

Most of the Spread of MSA Approved to Submitted Ratios Is Due to Drugs



Median is 1.00 for all years

*Excluding December 2012

Source: Gould & Lamb's Medicare Set-Aside Sample Data—MSAs completed between January 2010 and November 2013 for submissions to CMS between September 2009 and November 2013

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