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

1965
Inception of Medicare program (Medicare Secondary Payer applies only to WC)

1980
Congress enacts Medicare Secondary Payer Act

2001
GAO Audit
The Patel Memorandum circulated by the CMS
Enforcement begins

2005
Part D Prescription Drug Memorandum
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
- **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

Carrier contemplates settlement

Makes offer, including future medical (may use a vendor to help develop offer)

Claimant tentatively accepts settlement amount
  • Includes state court approval, when applicable

CMS response

MSA submission to CMS
  • Includes provision for reimbursement of any conditional payments
  • Carrier or representative (vendor, attorney) submits to CMS

Contract with vendor to complete MSA

Some possible outcomes

• Acceptance of CMS MSA amount might result in settlement
• CMS’s demand for greater medical might result in medical not being settled
• Initial settlement agreement may expire due to delays
CMS Workers Compensation Review Thresholds

Currently Medicare Eligible (Class I)

- WC Settlement > $25,000

  - 65 or older
    - Social Security Disability for more than 2 years
    - End Stage Renal Disease

Likely Medicare Recipient Within 30 Months (Class II)

- WC Settlement > $250,000

  - 62.5 or older
    - Applied for Social Security Disability or Renal Disease not in the end stage
Most States Allow Settlement of WC Medical

Green = Yes
Blue = No
Yellow = Under certain conditions
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
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.
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

- **Likely Eligible Within 30 Months**: 6%
- **Currently Eligible Due to Age**: 29%
- **Currently Eligible, Not Due to Age**: 65%

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

Distribution of Claimant Age at CMS Submission

<table>
<thead>
<tr>
<th>Claimant Age at Submission</th>
<th>Share of MSA Submissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 30</td>
<td>1%</td>
</tr>
<tr>
<td>30-39</td>
<td>4%</td>
</tr>
<tr>
<td>40-49</td>
<td>15%</td>
</tr>
<tr>
<td>50-59</td>
<td>34%</td>
</tr>
<tr>
<td>60-69</td>
<td>37%</td>
</tr>
<tr>
<td>70+</td>
<td>8%</td>
</tr>
</tbody>
</table>

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

- 25K-50K: 16%
- 50K-100K: 25%
- 100K-150K: 17%
- 150K-200K: 13%
- Over 200K: 29%

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

<table>
<thead>
<tr>
<th>Proposed MSA</th>
<th>Share of MSA Submissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 25K</td>
<td>45%</td>
</tr>
<tr>
<td>25K-50K</td>
<td>16%</td>
</tr>
<tr>
<td>50K-100K</td>
<td>18%</td>
</tr>
<tr>
<td>100K-150K</td>
<td>8%</td>
</tr>
<tr>
<td>150K-200K</td>
<td>4%</td>
</tr>
<tr>
<td>Over 200K</td>
<td>8%</td>
</tr>
</tbody>
</table>

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

- Other than MSA
- MSA Parts A and B
- MSA Part D

Share of Total Proposed Settlement Costs

25K-50K: 3% (Other than MSA), 2% (MSA Parts A and B), 0.8% (MSA Part D)
50K-100K: 10% (Other than MSA), 2% (MSA Parts A and B), 1% (MSA Part D)
100K-150K: 12% (Other than MSA), 2% (MSA Parts A and B), 2% (MSA Part D)
150K-200K: 12% (Other than MSA), 2% (MSA Parts A and B), 2% (MSA Part D)
Over 200K: 36% (Other than MSA), 14% (MSA Parts A and B), 12% (MSA Part D)

Total Proposed Settlement

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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Half of MSAs Reviewed by CMS Involve Musculoskeletal Impairments

Distributions of MSAs and Countrywide Workers Compensation Claims by Injury*

- MSAs
- Countrywide WC Claims

<table>
<thead>
<tr>
<th>Category</th>
<th>MSAs</th>
<th>Countrywide WC Claims</th>
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</thead>
<tbody>
<tr>
<td>Disease of the Musculoskeletal System and Connective Tissue</td>
<td>54%</td>
<td>34%</td>
</tr>
<tr>
<td>Sprains and Strains of Joints and Adjacent Muscles</td>
<td>18%</td>
<td>17%</td>
</tr>
<tr>
<td>Fractures</td>
<td>11%</td>
<td>4%</td>
</tr>
<tr>
<td>Open Wound</td>
<td>1%</td>
<td>11%</td>
</tr>
<tr>
<td>All Others</td>
<td>16%</td>
<td>34%</td>
</tr>
</tbody>
</table>

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

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Most MSA Settlements Are Paid as a Lump Sum

Distribution of MSA Submissions by Funding Mechanism

- **Lump Sum** 56%
- **Annuity** 44%

*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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Recent MSA Trends
CMS Letters of Determination Surged in December 2012

Share of MSAs by Quarter in Which Determination Letter Was Received

- Determination Letter Received in December 2012

<table>
<thead>
<tr>
<th>Quarter in Which Determination Letter Was Received</th>
<th>Share of MSAs in Data Sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>1Q2010</td>
<td>2%</td>
</tr>
<tr>
<td>2Q2010</td>
<td>4%</td>
</tr>
<tr>
<td>3Q2010</td>
<td>4%</td>
</tr>
<tr>
<td>4Q2010</td>
<td>4%</td>
</tr>
<tr>
<td>1Q2011</td>
<td>6%</td>
</tr>
<tr>
<td>2Q2011</td>
<td>7%</td>
</tr>
<tr>
<td>3Q2011</td>
<td>7%</td>
</tr>
<tr>
<td>4Q2011</td>
<td>9%</td>
</tr>
<tr>
<td>1Q2012</td>
<td>6%</td>
</tr>
<tr>
<td>2Q2012</td>
<td>7%</td>
</tr>
<tr>
<td>3Q2012</td>
<td>3%</td>
</tr>
<tr>
<td>4Q2012</td>
<td>2%</td>
</tr>
<tr>
<td>1Q2013</td>
<td>16%</td>
</tr>
<tr>
<td>2Q2013</td>
<td>11%</td>
</tr>
<tr>
<td>3Q2013</td>
<td>7%</td>
</tr>
<tr>
<td>4Q2013</td>
<td>7%</td>
</tr>
</tbody>
</table>

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

Share of MSAs Approved as Submitted

Quarter in Which Determination Letter Was Received

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

MSA Processing Time

- Median Processing Time
- Average Processing Time

Days

Quarter in Which Determination Letter Was Received

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

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There Is No Apparent Trend in Average Approved MSAs

MSA Approved Amounts

Quarter in Which Determination Letter Was Received

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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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

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Gap Between Submitted and Approved MSAs Is Shrinking

Excluding December 2012

Year Determination Letter Was Received

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

Excluding December 2012

- Average Approved Parts A and B
- Average Submitted Parts A and B

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 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

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

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 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

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Ratio of Overall Approved to Submitted Ratio</th>
</tr>
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<tbody>
<tr>
<td>2010</td>
<td>1.09</td>
</tr>
<tr>
<td>2011</td>
<td>1.06</td>
</tr>
<tr>
<td>2012</td>
<td>1.11</td>
</tr>
<tr>
<td>2013</td>
<td>1.11</td>
</tr>
</tbody>
</table>

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

Part D Overall Approved to Submitted Ratio

- Part D Overall Approved to Submitted Ratio
- Part D Overall Approved to Submitted Ratio—Excluding December 2012

Year Determination Letter Was Received

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 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
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

Part D Approved to Submitted Ratio

Year Determination Letter Was Received

- 95th Percentile
- 75th Percentile
- 25th Percentile
- 5th Percentile

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
Appendix
Top Ten MSA Volume States in Sample

Distribution of MSAs by State

<table>
<thead>
<tr>
<th>State</th>
<th>Share of MSAs</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>22%</td>
</tr>
<tr>
<td>NY</td>
<td>16%</td>
</tr>
<tr>
<td>IL</td>
<td>9%</td>
</tr>
<tr>
<td>FL</td>
<td>7%</td>
</tr>
<tr>
<td>GA</td>
<td>6%</td>
</tr>
<tr>
<td>NC</td>
<td>5%</td>
</tr>
<tr>
<td>MI</td>
<td>4%</td>
</tr>
<tr>
<td>PA</td>
<td>4%</td>
</tr>
<tr>
<td>SC</td>
<td>3%</td>
</tr>
<tr>
<td>AL</td>
<td>2%</td>
</tr>
</tbody>
</table>

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

Year Determination Letter Was Received

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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Bibliography

- D. Bellusci, “Impact of Medicare Requirements on Workers Compensation Claims,” NCCI Actuarial Committee, ACT-11-08, March 2011