



## MEDICARE SET-ASIDES AND WORKERS COMPENSATION— 2018 UPDATE

### INTRODUCTION

In September 2014, NCCI published a study on Medicare Set-Asides (MSAs) in workers compensation [1]. Using the sample of MSAs submitted to the Centers for Medicare & Medicaid Services (CMS) between September 2009 and November 2013 and completed between January 2010 and November 2013, the study examined several aspects related to MSAs, such as:

- MSA Demographics
  - The distribution of amounts of MSAs and total settlements that include MSAs
  - Claimants' age distribution
- The CMS Review Process
  - Duration of time from submission to CMS approval
  - Relation between submitted and CMS-approved MSA amounts

This paper provides an update and expansion of the previous MSA study using the larger data sample as well as additional experience from 2014 and 2015. We are grateful to ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for providing the data that is the basis for this study.

### KEY FINDINGS

- CMS processing times have declined since 2012, and recent CMS processing times have been the lowest since 2010.
- Median CMS processing time appears to be longer for the largest MSA submissions than for smaller MSA submissions.
- The ratio of approved to submitted MSA amounts declined from 2010 to 2013 and increased slightly from 2013 to 2015.
  - The ratio of approved to submitted MSA amounts for Medicare Parts A and B has been fairly stable over the period 2010 to 2015.
  - The movement in the overall ratio of approved to submitted MSA amounts is largely due to the ratios of approved to submitted Medicare Part D (drugs) amounts.
- Overall, drugs are about half of MSA amounts, but for more than one-third of MSAs, drugs are less than 10% of the MSA value.
- Larger MSAs have larger drug shares.
- Most MSAs are for claimants who are Medicare-eligible at the time of settlement. Most of these claimants are Medicare-eligible because they have been on Social Security Disability for at least two years.
- The largest number of MSAs are submitted approximately four years from the year of accident.
- MSAs make up about 45% of total submitted settlements.
- Over half of MSAs involve an attorney.

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## BACKGROUND

Some workers compensation claimants are either eligible for Medicare benefits or will become eligible in the near future. By law,<sup>1</sup> Medicare is a secondary payer for work-related injuries—workers compensation should pay for medical services for such injuries. Workers compensation insurers (including self-insureds) are therefore required to protect Medicare’s interests when settling claims. Workers compensation Medicare Set-Asides—funds established to pay future work-related-injury medical costs that might otherwise be paid by Medicare—are common mechanisms used to protect Medicare’s interests. An MSA can be funded as a lump sum, an annuity, or some combination of these. An MSA can be “self-administered,” meaning that the claimant administers the MSA, or the MSA can be professionally administered.

For total workers compensation settlements meeting certain criteria, CMS will review the submitted MSA. Having CMS review a submitted MSA is optional—there is no requirement that carriers submit proposed MSAs to CMS for review. However, there is a “safe-harbor” aspect to having CMS review a submitted MSA. If certain conditions are met and the MSA funds are not sufficient to pay for the medical care needed for the work-related injury, then Medicare will pay for any further (otherwise Medicare-covered) medical services needed to treat the work-related injury and not go back to the workers compensation insurer.

CMS has two thresholds for reviewing MSAs, often called the “\$25,000 threshold” and the “\$250,000 threshold.” Specifically, CMS will review a submitted MSA when:

- The claimant is currently Medicare-eligible and the submitted total settlement is greater than \$25,000. The claimant might be Medicare-eligible because:
  - They are 65 years old or older
  - They have been on Social Security Disability for at least two years
- The claimant is likely to become Medicare-eligible within 30 months and the submitted total settlement is greater than \$250,000. The claimant might be likely to become Medicare-eligible within the next 30 months because:
  - They are at least 62½ years old but not yet 65 years old
  - They have been on Social Security Disability for less than two years or are likely to become eligible for Social Security Disability within the next six months

The focus of this paper is the CMS review process, which is just one part of the total claims settlement process.

CMS uses a contractor to review submitted MSAs; the agency changed contractors on July 1, 2012. For additional background related to MSAs, see:

- CMS’s *Self-Administration Toolkit for Workers’ Compensation Medicare Set-Aside Arrangements* on [cms.gov](https://www.cms.gov)
- CMS’s *Workers’ Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide* on [cms.gov](https://www.cms.gov)

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<sup>1</sup> The 1965 Medicare Amendment to the Social Security Act and the 1980 Medicare Secondary Payer Act (MSP) both state that Medicare is a secondary payer for medical services for work-related injuries.

## STUDY DATA

Medicare Set-Aside data was provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum. The sample data is based on approximately 11,500 Medicare Set-Asides (MSAs) submitted to the Centers for Medicare & Medicaid Services (CMS) between September 2009 and December 2015 and completed between January 2010 and December 2015. Data for each submission to CMS includes the submitted total settlement, the submitted MSA amount, and the final MSA amount.

Although the data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions is a sample and may not be representative of all MSAs, the distribution of MSAs by state was in line with the general state population for states that allow settlements for workers compensation medical benefits. The data does not provide information on whether the settlement was actually done.

## TERMINOLOGY

Terms used throughout this study include:

- WC Medicare Set-Aside (MSA)—a fund established to pay medical costs to treat a work-related injury that might otherwise be paid by Medicare
- Centers for Medicare & Medicaid Services (CMS)—US federal agency responsible for the administration of the Medicare and Medicaid programs, among other services
- Medicare—federal health insurance program mainly for people who are 65 years of age or older and for younger individuals with certain disabilities
- Medicare Parts A and B—cover hospital, office visits, and related services
- Medicare Part D—covers prescription drug

**PROCESSING TIME**

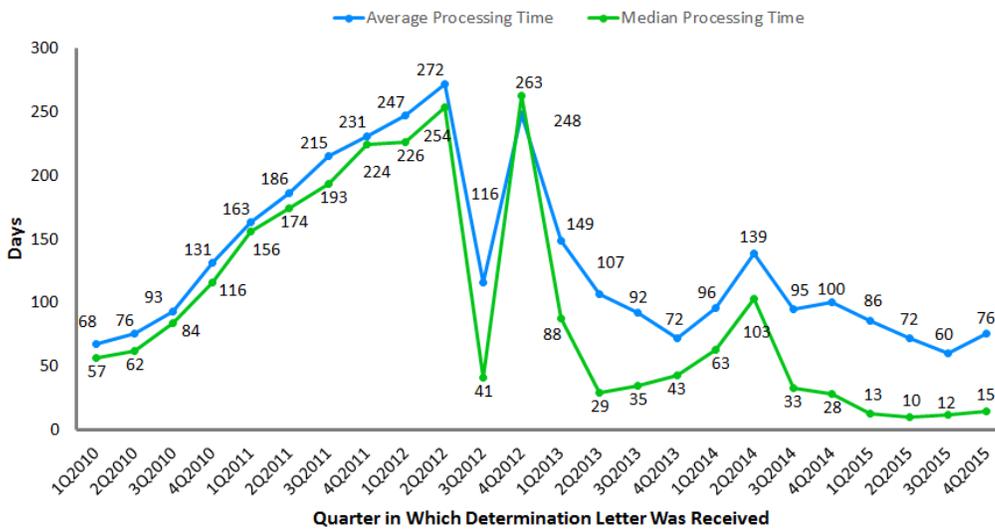
Exhibit 1 displays the average and median processing times <sup>2</sup> for MSAs by the quarter of receipt of the final determination letter. A determination letter gives CMS’s value for the MSA, and its issuance generally ends the CMS review process. Processing time is the number of days from submitting an MSA to CMS to receiving the determination letter. The processing times shown for 1st and 2nd Quarter 2010 may be understated because the data does not include submissions made before September 2009.

Except for 2nd Quarter 2014, the average and median processing times have been declining since 2012. In 2015, the average processing time was about 70 days, which is the lowest average processing time between 2010 and 2015. Such processing times are in stark contrast with processing times in 2011 and 2012, where the average processing time was 202 and 240 days, respectively.

Exhibit 1 also shows that:

- Average processing time nearly tripled from 3rd Quarter 2010 to 2nd Quarter 2012. The average and median processing times progressively increased at similar rates over this period. The similarities in these two measures indicate a narrow distribution of processing times. It appears that, during this period, CMS was mostly working on the oldest submissions, and the age of these oldest submissions kept increasing. The 2012 US Government Accountability Office (GAO) [2] report noted this increase and discussed actions by CMS to reduce MSA processing time—see Appendix for excerpts from the GAO report.
- 3rd Quarter 2012 marks the first quarter where processing times decreased. Perhaps the decrease is related to the July 1, 2012 CMS change in contractor mentioned in the Background section.
- 4th Quarter 2012 and 2nd Quarter 2014 show spikes in processing times and appear anomalous. As it will be discussed later, these quarters appear to be related to the clearing of backlog claims by CMS.

**Average Processing Time in 2015 Was About 70 Days and Is the Lowest Average Processing Time in 2010–2015 Period**



Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

**Exhibit 1**

<sup>2</sup> The median processing time is the number of days for which half of MSAs are processed in less time and half take longer.

Exhibit 2 shows the share of MSAs by the quarter of receipt of the final determination letter. As highlighted in the graph, there are two months where CMS provided unusual numbers of determination letters: December 2012 and May 2014

The surge in determination letters in December 2012 appears to be part of a process to reduce a backlog that had built up, and it follows the appointment of a new contractor on July 1, 2012. Only 10% of MSAs that were returned in December 2012 were submitted in the previous six months. The average time from submission to determination letter for these MSAs was about nine months, and some were submitted more than a year prior. Most of the determination letters issued in December, 2012 approved the MSAs as submitted.

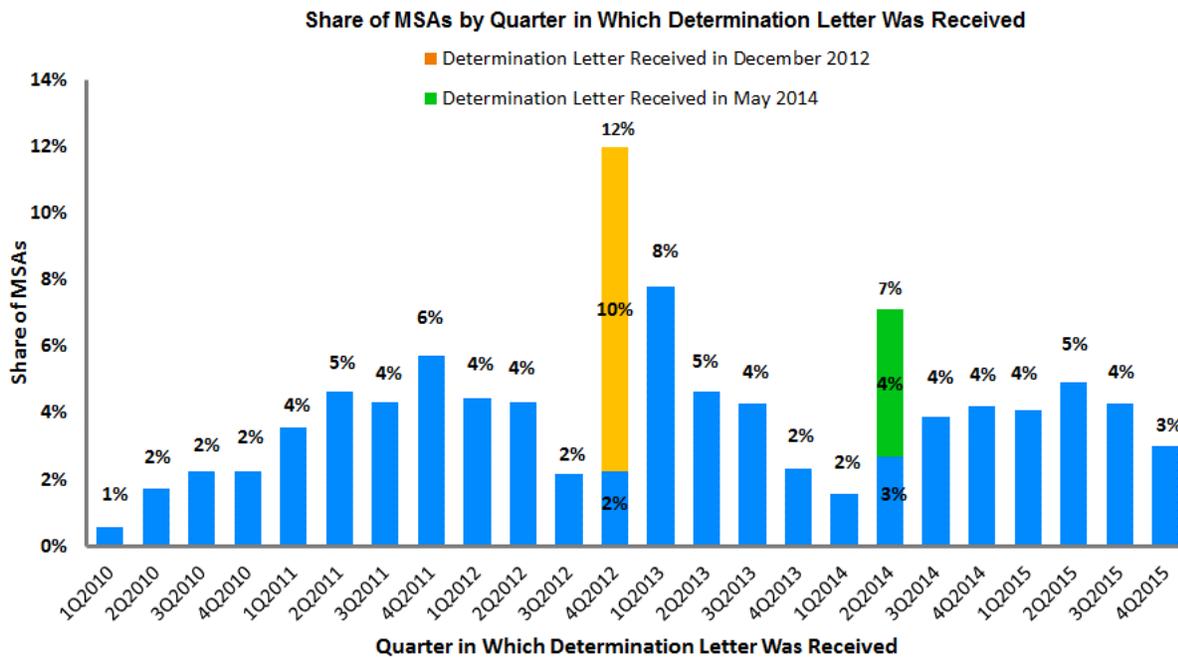
Between 1st Quarter of 2013 and 1st Quarter of 2014, the number of determination letters gradually declined. This trend reversed in 2nd Quarter of 2014 when the number of determination letters issued by CMS surged one more time. This surge also appears to be part of a process to reduce a backlog of MSAs with some notable differences from the backlog clearing performed in December 2012

- Almost 80% of MSAs that were returned in May 2014 were submitted in the previous six months
- The average time from submission to determination letter for MSAs returned in May 2014 was five months

Such differences from the December 2012 backlog clearing perhaps indicate the CMS adherence to policy of making a determination within 45 to 60 days from the time that all relevant documents are submitted. This time frame was mentioned in the GAO report and again in the *Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide* [3]. Please consult the Appendix for excerpts from both documents.

There are low shares of MSAs for determination letters received in 2010 because our data only covers submissions made in September 2009 or later.

## CMS Letters of Determination Surged in December 2012 and May 2014



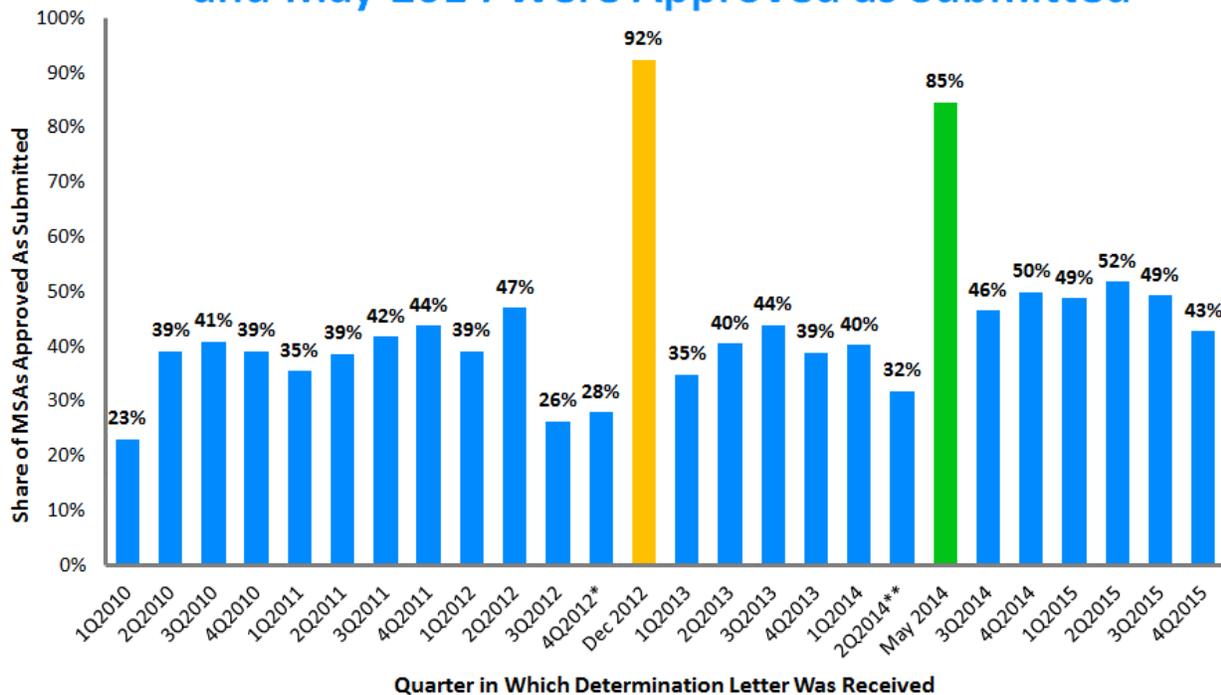
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**Exhibit 2**

Exhibit 3 shows the shares of MSAs approved as submitted by the quarter of receipt of the final determination letter. As noted above, 1st Quarter of 2010, 4th Quarter of 2012, and 2nd Quarter of 2014 were anomalous. Excluding those quarters, the average share of MSAs approved as submitted is slightly above 40%. On the other hand, about 90% of MSAs were approved as submitted during December 2012 and May 2014.

As discussed earlier, these two spikes appear to be related to clearing the backlog of MSAs. From 3rd Quarter of 2014, the share of MSAs approved as submitted is about 50%, a somewhat higher share than earlier periods, except the periods when backlogs were cleared. This could be an indication that vendors and carriers are starting to better understand CMS requirements and, as a result, submitted values may be more in line with CMS requirements.

## About 90% of MSAs Completed During December 2012 and May 2014 Were Approved as Submitted



\*Excluding December 2012; 4Q2012 approved as submitted share including December 2012 is 80%

\*\*Excluding May 2014; 2Q2014 approved as submitted share including May 2014 is 65%

Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

**Exhibit 3**

Exhibit 4 shows the median processing time and average processing time for different submitted MSA amounts. To get a better understanding of how recent processing times differ by submitted MSA amounts, only the data for MSAs submitted and approved by CMS between January 1, 2014, and December 31, 2015, were included. May 2014 determinations were also excluded since, as discussed earlier, it appears that CMS was clearing the claims backlog at that time—and we did not want claims which may have not been as closely scrutinized to influence the analysis.

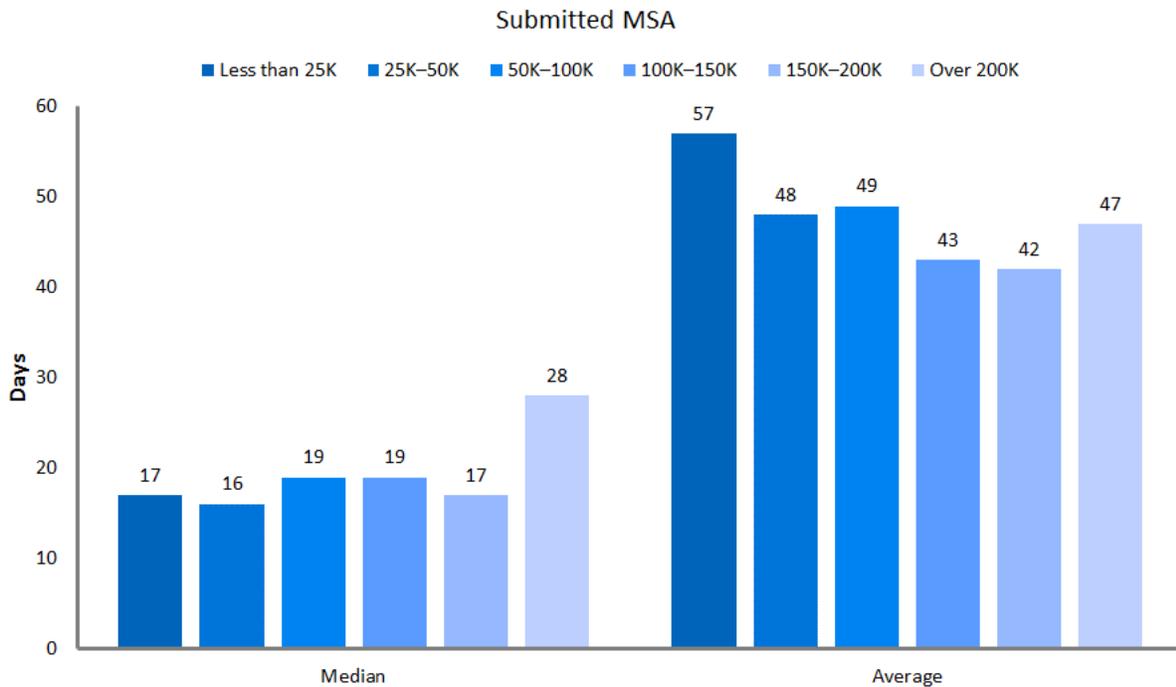
As the exhibit shows, the median processing times do not show much variation for submitted MSAs less than \$200,000. The median processing time for such claims is approximately 18 days. The median processing time increases to 28 days for submitted MSAs that are greater than \$200,000. A possible explanation for this difference would be that more claims processing effort is needed by CMS to examine most expensive claims, which have a significant share of serious injuries such as limb amputations, spinal cord injuries, or head trauma.

The average processing time shows more variation across different submitted MSA sizes than the median. The average processing time is largest—about 60 days—when the submitted MSA size is under \$25,000. It then gradually decreases to about 50 days for MSA submissions between \$25,000 and \$100,000 and 42 days for submissions between \$100,000 and \$200,000. The average processing time increases to 47 days for the MSA submissions larger than \$200,000. A possible explanation for this variation would be that more requests for additional information or documentation are made by CMS for MSA submissions less than \$100,000. Approximately 30% of CMS submissions for MSAs less than \$100,000 are required to provide additional claim documentation, while 25% of submissions for MSAs greater than \$100,000 are asked to do the same. Some MSA submissions that were asked to provide further information need more time to gather such documentation, and this can put upward pressure on average processing times.

In percentage terms, CMS generally requires larger increases on the smaller MSA submissions. For example, CMS has requested an average 51% increase when the submitted MSA is under \$25,000, while only an average 6% increase is required when a submitted MSA exceeds \$200,000. Across all sizes of submitted MSAs, estimates of future drug costs are the main reason for the increases.

### Median Processing Time Longer for Largest MSAs

2014–2015 Submissions [Excludes May 2014 Determinations]



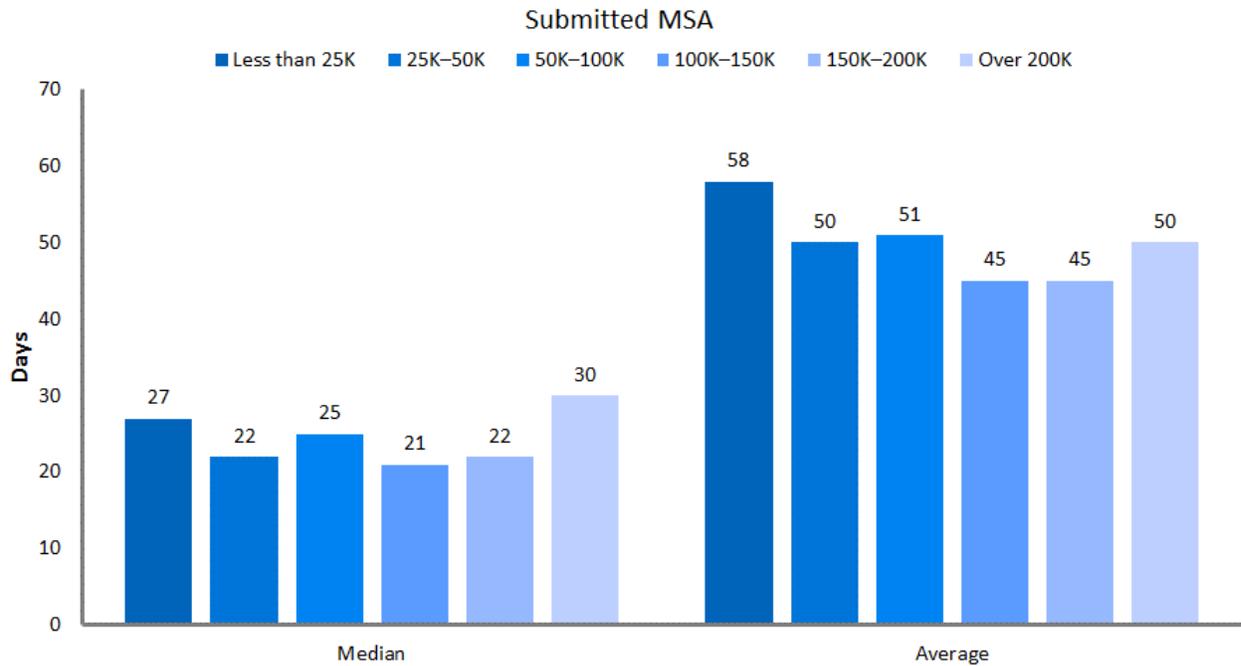
Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2014 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between January 2014 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

Exhibit 4

Exhibit 4-a shows the average processing time and median processing time for different submitted MSA amounts including May 2014 submissions. A similar conclusion made in the previous exhibit appears to apply here as well—the size of the submitted MSA does not have a significant impact on processing time.

## Similar Processing Time Pattern Is Observed When May 2014 Determinations Are Included

2014–2015 Submissions



Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2014 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between January 2014 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

**Exhibit 4-a**

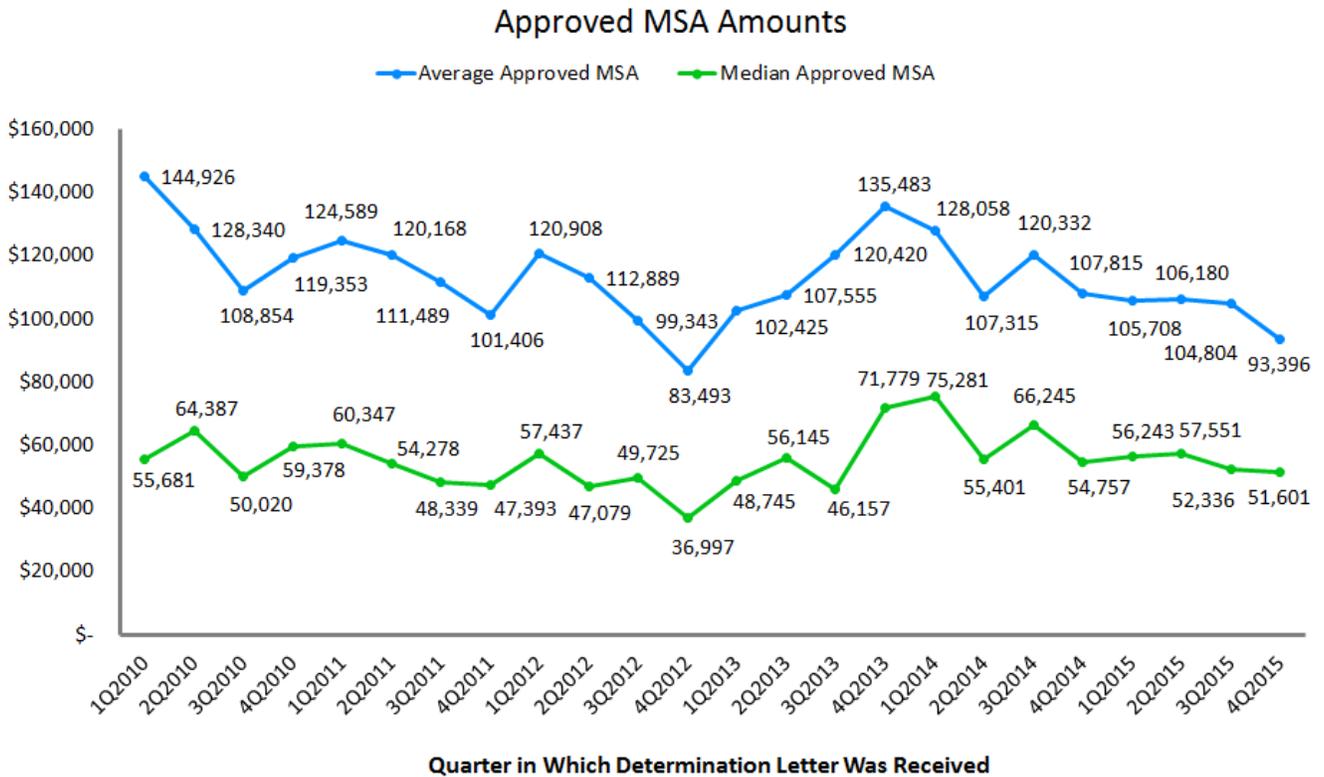
**AVERAGE VS. SUBMITTED**

Exhibit 5 shows the median and the average approved MSAs for the quarter in which the CMS review was completed:

- Apart from 3rd Quarter 2014, average approved MSA amounts appear to be declining since 4th Quarter 2013
- Average approved amounts tend to vary more than the median approved amounts

The difference between the average and the median is due to the distribution of MSA sizes. As shown later in the paper (Exhibit 19), more than half of MSAs are less than \$50K. The spike in the average for 4th Quarter 2013 is due to a few large claims and not a general increase in MSA size.

**Average Approved MSA Has Been Declining Since 2013**



Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

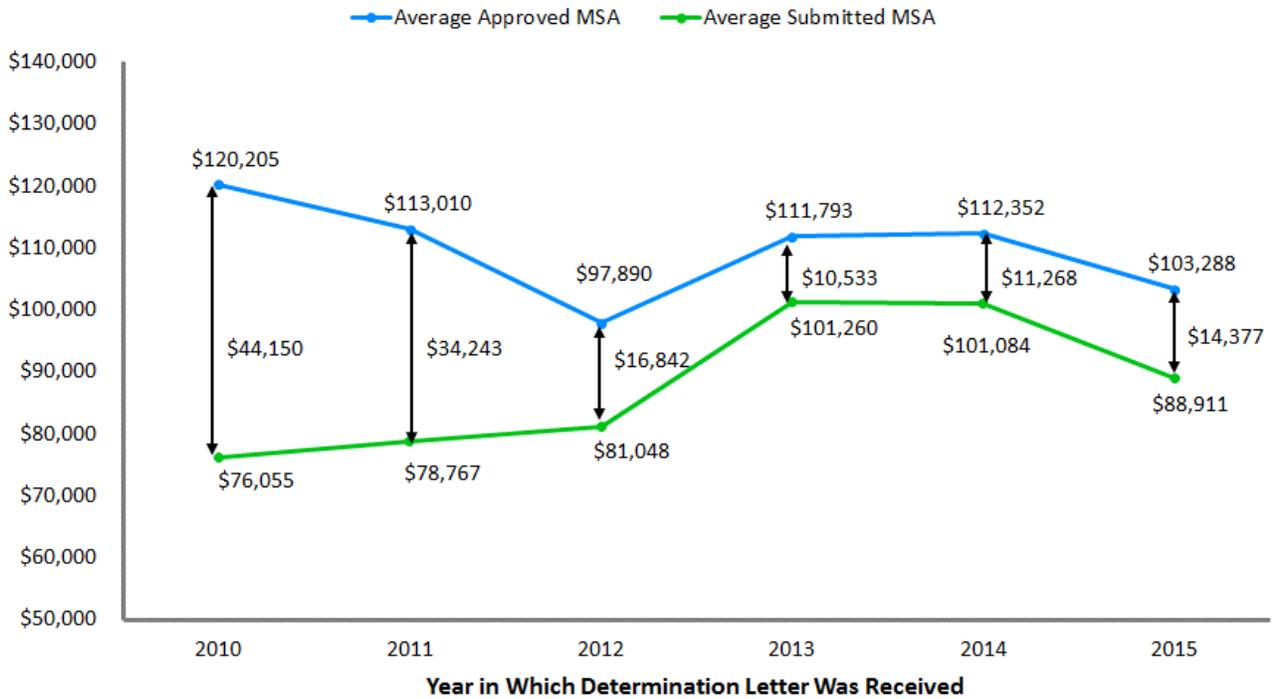
**Exhibit 5**

While many MSAs have been approved by CMS as submitted, CMS often requires that the MSA be increased. Exhibits 6 through 11 compare the average CMS-approved MSA amount to the average submitted by the year that the review was completed. The graphs show that the average CMS-approved amount has been greater than the average submitted amount. Due to the impact of the large number of December 2012 and May 2014 determination letters that, for the most part, approved submissions as filed (see Exhibit 3), these exhibits are provided to compare the approved and submitted values including and excluding submissions completed during those months.

As Exhibits 6 and 7 show, the gap between average submitted and approved MSA amounts has been shrinking and, since 2013, appears steady. Exhibit 6b, which excludes the December 2012 and May 2014 completed submissions, suggests that there is no significant trend in the average value of approved MSAs. On the other hand, there has been an upward trend in the average submitted MSA since 2011. Vendors and carriers may now understand CMS procedures better and, as a result,

submitted values may be more in line with what CMS is likely to require. In addition, CMS has published improved guidelines and appears to have become more consistent in its valuation of MSAs. The result is that the ratio of approved to submitted MSA has dropped from 1.58 to 1.10 for submissions completed between 2010 and 2013, as shown in Exhibit 7. Since 2013, this ratio has increased slightly. In 2015, the ratio of average approved to submitted MSA is 1.16

## The Gap Between Approved and Submitted MSA Appears Steady Since 2013

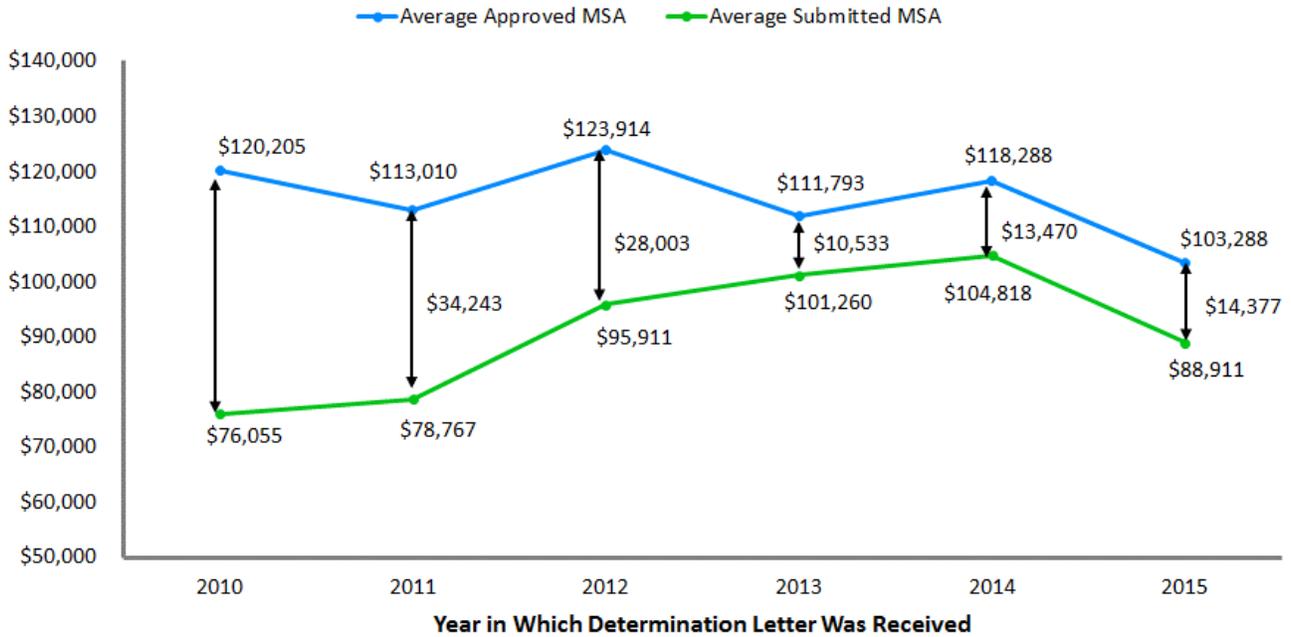


Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

Exhibit 6-a

## May 2014 Determinations Have Little Impact on the Gap Between Approved and Submitted MSA

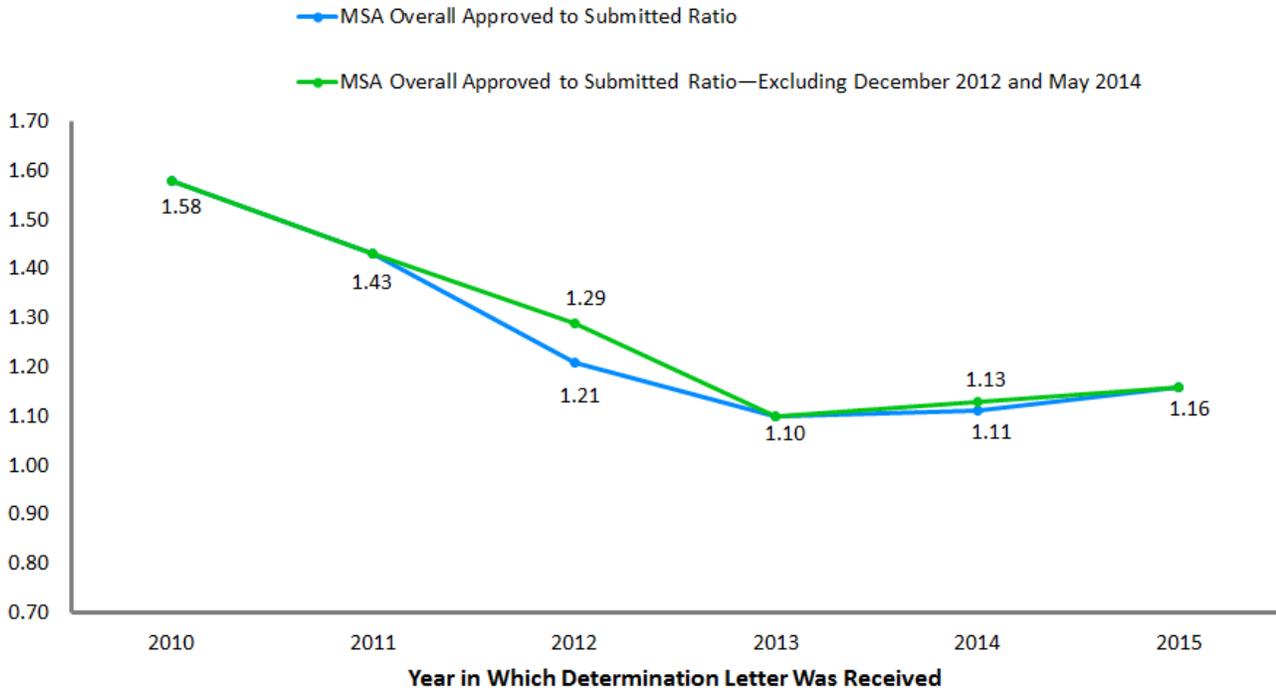
Excluding December 2012 and May 2014



Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

Exhibit 6-b

## After a Period of Decline, the Ratio of Overall Approved to Submitted MSAs Is Increasing



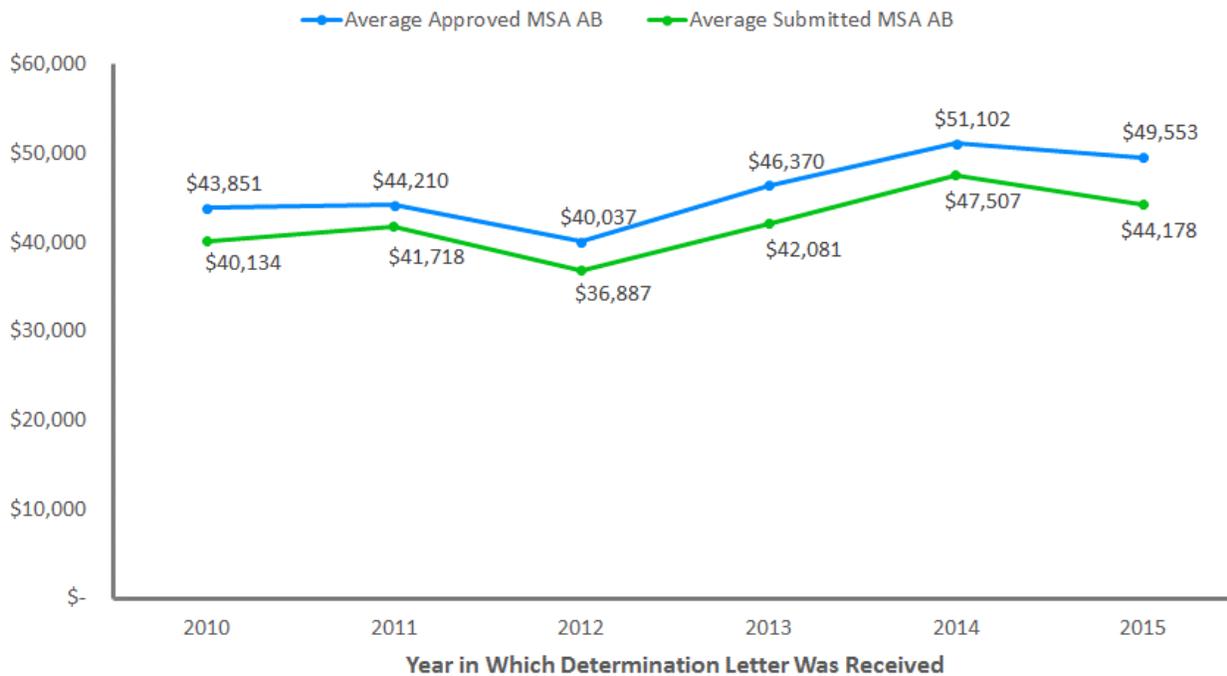
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**Exhibit 7**

Exhibits 8 through 11 are similar to Exhibits 6 and 7, but look separately at the components of the MSA for Medicare Parts A and B (Exhibits 8 and 9) and Medicare Part D (Exhibits 10 and 11).

The gap between approved and submitted MSAs for Parts A and B has been stable, as Exhibits 8 and 9 show. Although the average approved MSA for Parts A and B has been fairly stable, Exhibit 9 shows that the average approved amounts have been approximately 10% higher than the submitted amounts. As one can also see, this ratio has been fairly stable over the period reviewed.

## The Gap Between Approved and Submitted MSAs for Parts A and B Is Stable

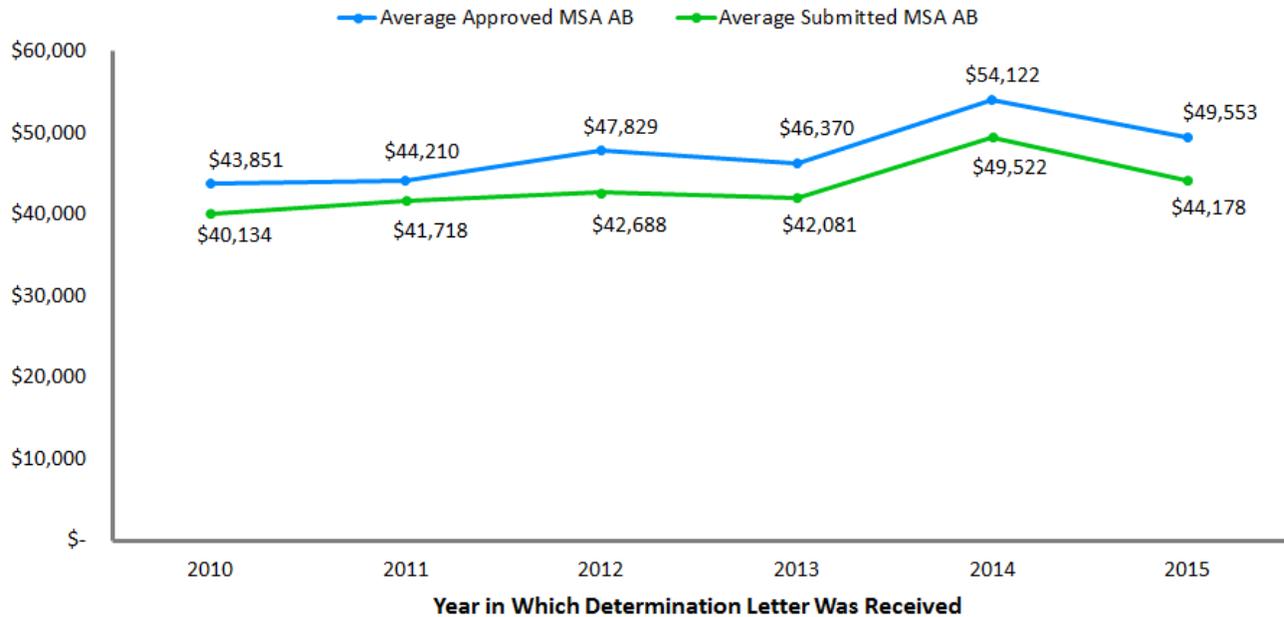


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**Exhibit 8-a**

## December 2012 and May 2014 Determinations Have Little Impact on the Gap Between Approved and Submitted MSAs

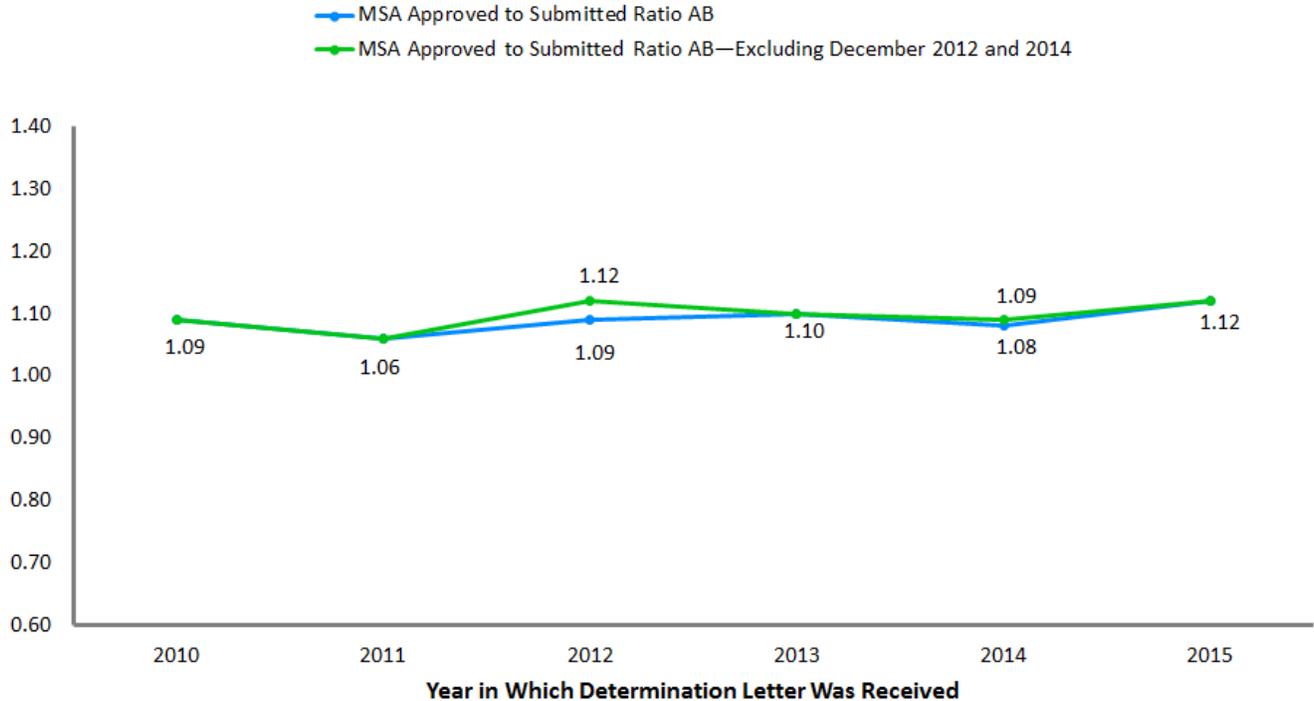
Excluding December 2012 and May 2014



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**Exhibit 8-b**

## The Ratio of Approved to Submitted MSAs for Parts A and B Appears Stable



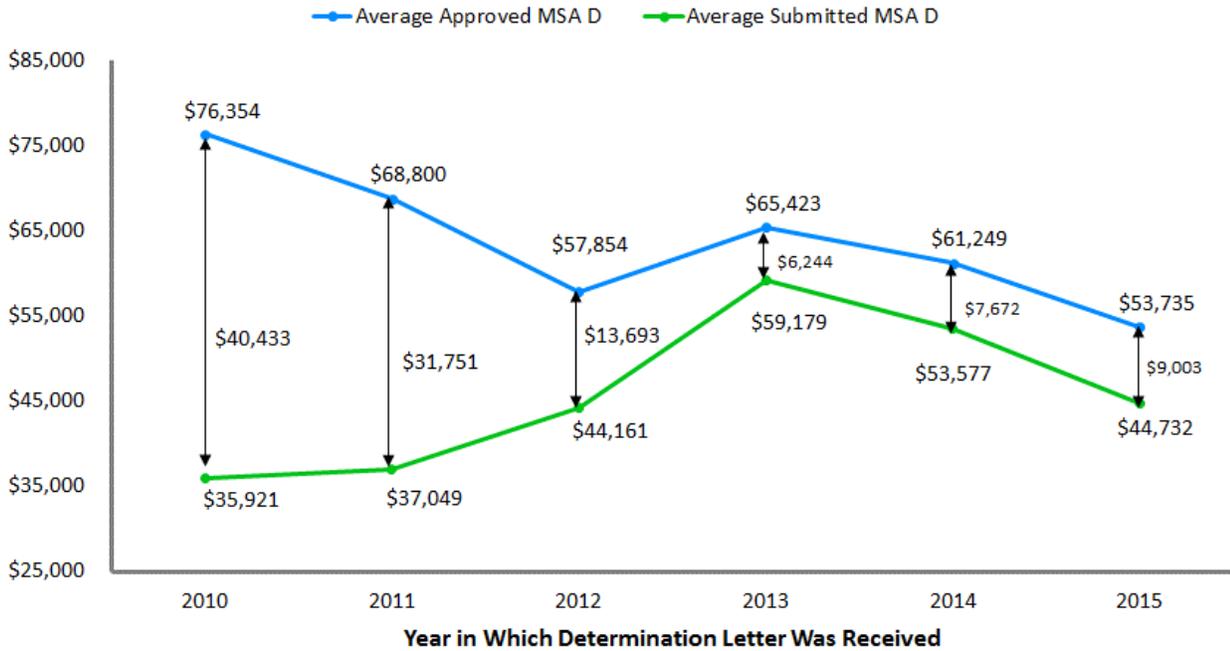
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### Exhibit 9

The gap between average submitted and approved MSA amounts for prescription drugs, which are covered under Medicare Part D, declined between 2010 and 2013, as Exhibits 10-a and 10-b show. Some possible reasons for the high ratio in 2010 and the immediately following years are given in [1].

Since 2013, the gap between average submitted and approved MSA amounts for prescription drugs appears to be increasing slightly. However, such increases are small when compared to the period 2010 to 2012.

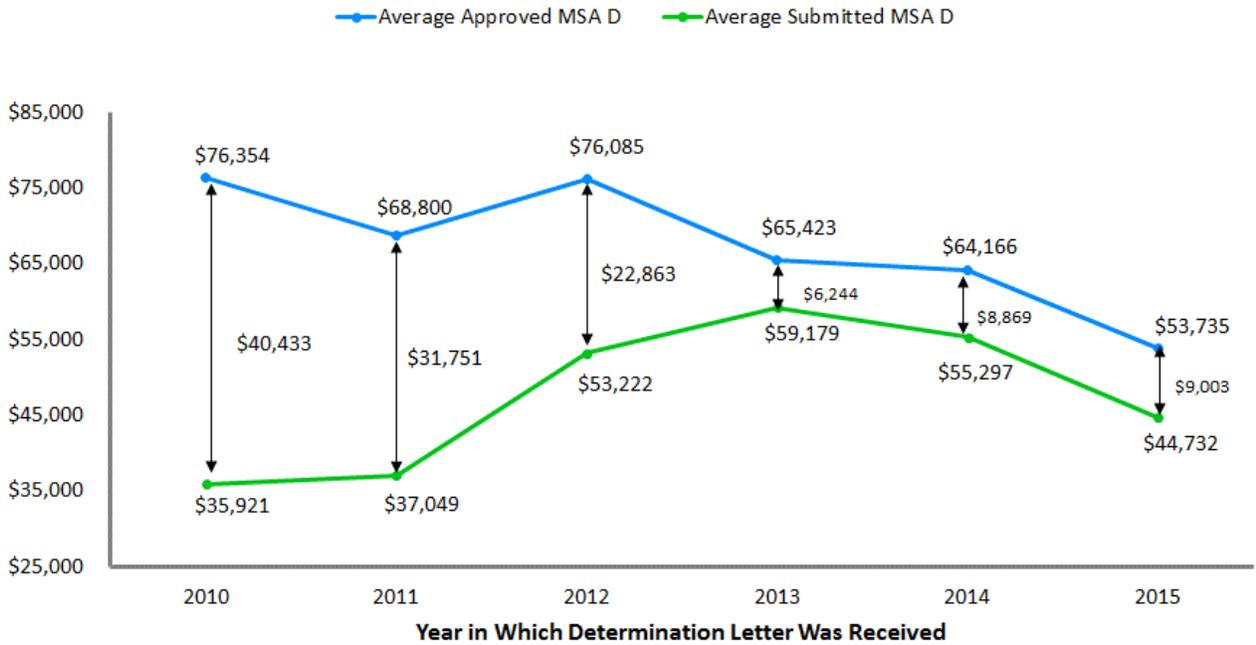
## After a Period of Significant Declines, the Gap Between Approved and Submitted MSAs for Drugs Is Starting to Increase Slightly



Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

**Exhibit 10-a**

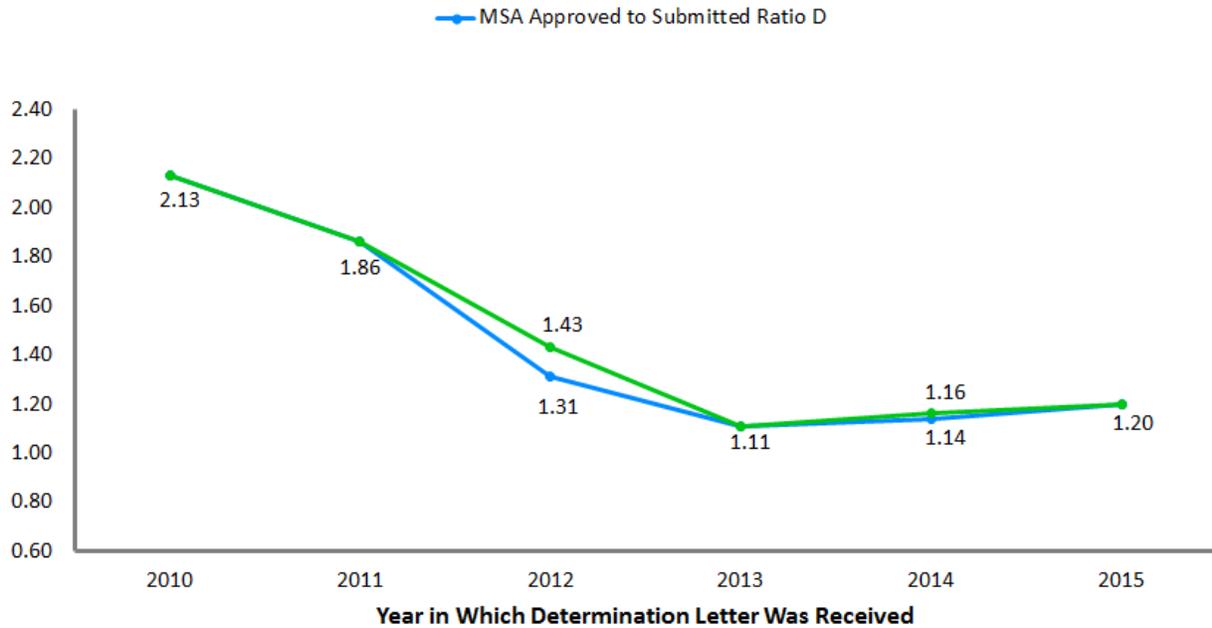
## Excluding December 2012 and May 2014 Determinations Highlights Smaller Gap Between Approved and Submitted MSAs for 2013 to 2015



Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

**Exhibit 10-b**

## After a Period of Significant Declines, the Ratio Between Approved and Submitted MSAs for Drugs Is Starting to Increase Slightly



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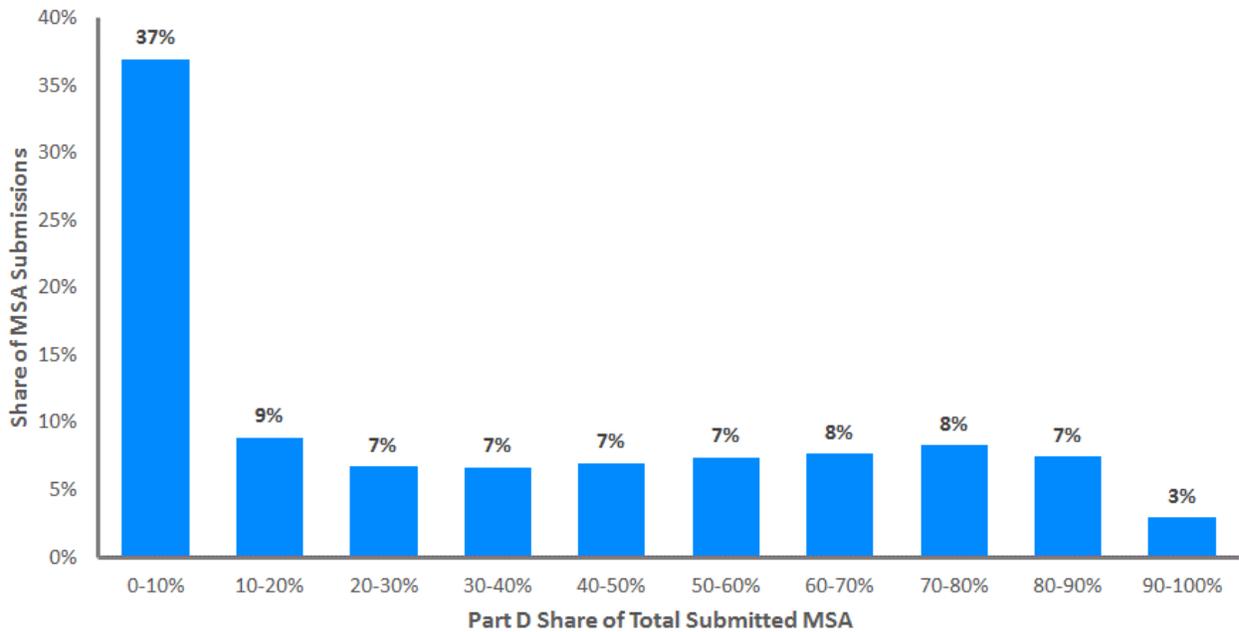
**Exhibit 11**

### PRESCRIPTION DRUGS IN MSA

Exhibit 12 shows a histogram of MSA submissions by the ratio of the submitted prescription drug settlement to the total MSA settlement. For example, the 40–50% point on the graph indicates that for 7% of all MSA submissions, the submitted prescription drug share is between 40% and 50% of the total MSA settlement. As the exhibit shows, for more than one-third of MSA submissions, this ratio is under 10%. There are slightly higher shares of submissions with drug ratios between 60% and 70% and between 70% and 80% than for other ranges 20% to 30% or higher.

A histogram with a similar shape is observed when considering the ratio of approved prescription drug settlements to the approved total MSA settlement. There are slightly higher shares of approvals with drug ratios between 70% and 80% and between 80% and 90% than for the same points in Exhibit 12.

## For More Than One-Third of MSA Submissions, Prescription Drugs Are Less Than 10% of Submitted MSA Settlement



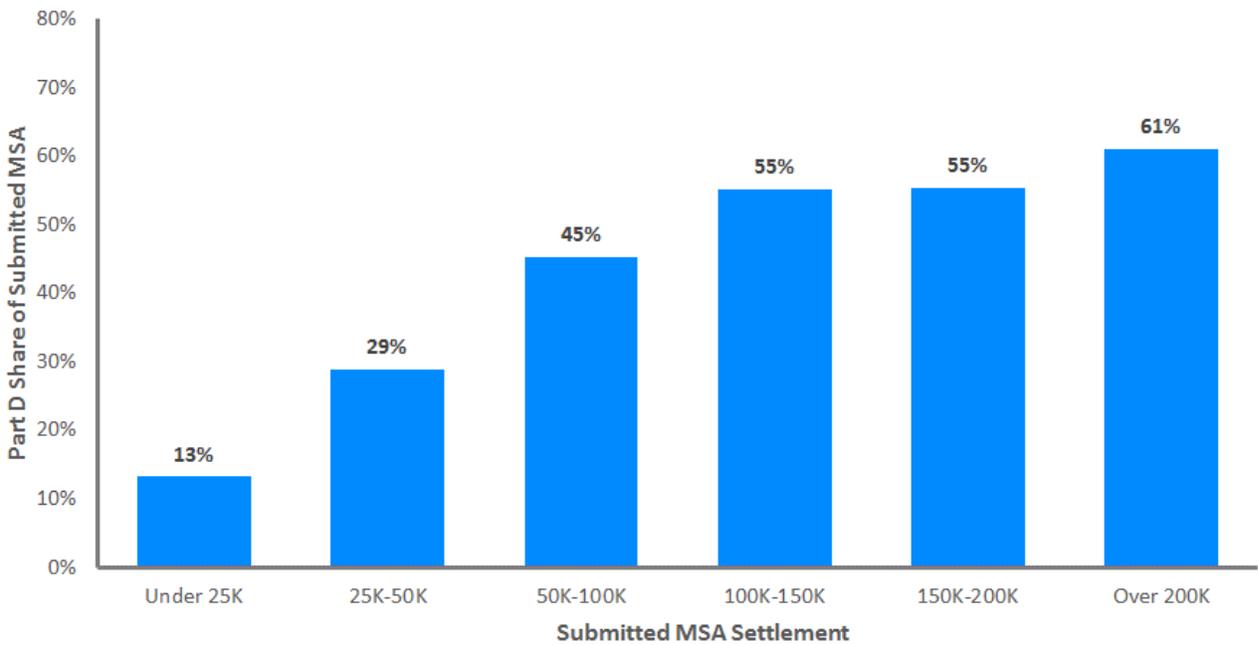
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**Exhibit 12**

Exhibit 13 shows the submitted prescription drug share of MSAs by different layers of submitted MSA settlement. As the exhibit shows, prescription drug share increases as the submitted MSA settlement gets larger. MSA settlements larger than 100K are often associated with more serious injuries such as back injuries, limb or finger amputations, burns, or head trauma. For such settlements, the average age at the time of the injury is approximately 40 years and the average age at the time of CMS submission is about 53 years. Study data also shows that many of them are experiencing chronic pain or depression. Therefore, it is not surprising that the majority of costs for large MSA settlements are for prescription drugs.

The CMS review process is more likely to increase the drug share of larger MSAs than smaller MSAs. A comparison of Exhibits 13 and 13-a shows higher drug ratios for approved MSAs over \$100K than for submitted MSAs over \$100K, but it shows similar drug ratios for submitted and approved MSAs under \$100K.

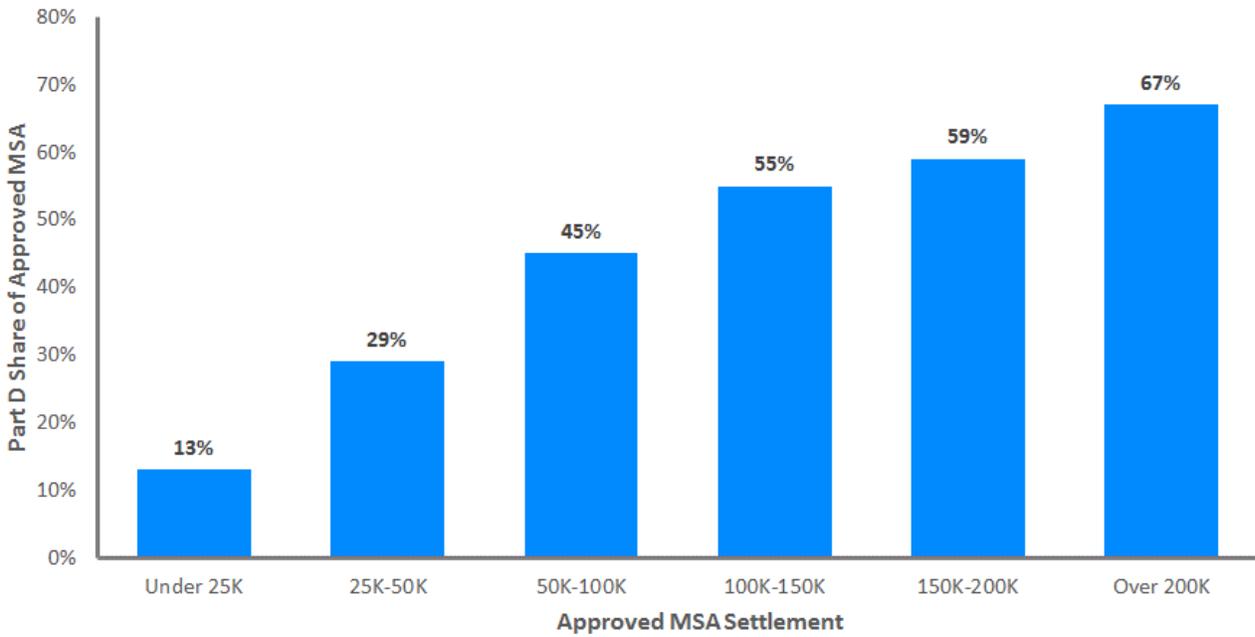
## Prescription Drug Share Increases as Submitted Total MSA Settlement Gets Larger



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**Exhibit 13**

## Prescription Drug Share Increases as Approved Total MSA Settlement Gets Larger



Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

**Exhibit 13-a**

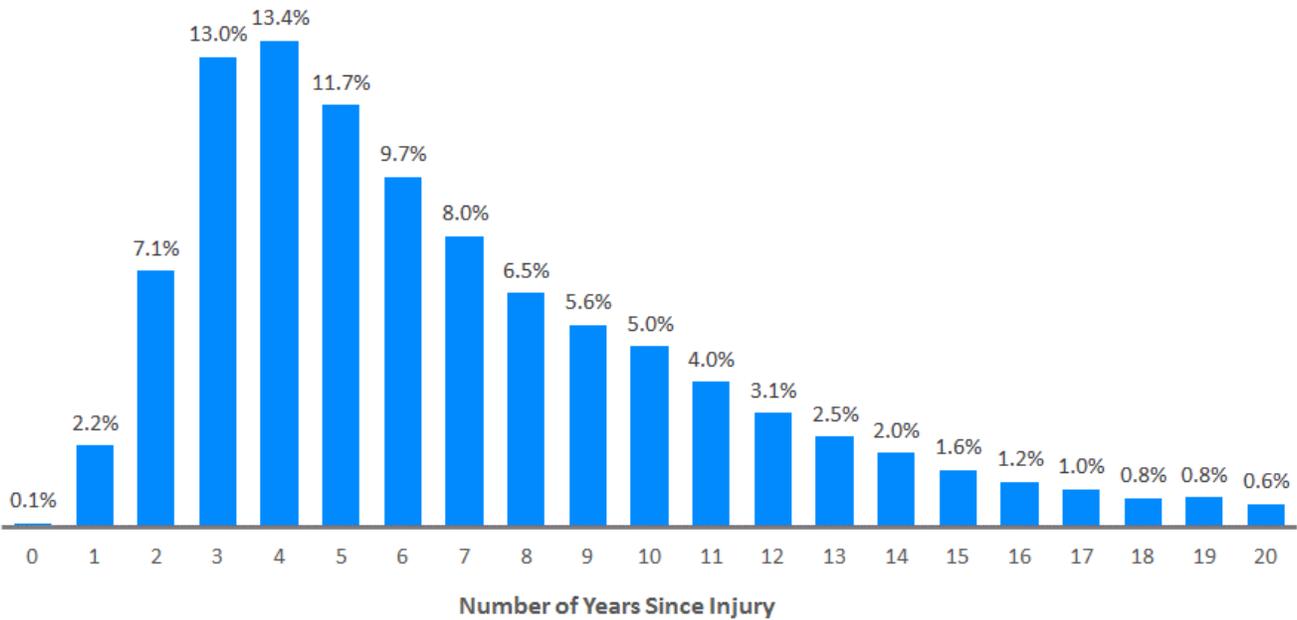
**SUBMISSION LAG**

Exhibit 14 shows the distribution of MSA submissions by number of years since the year of injury. Here 0 indicates MSAs submitted in the year of injury, 1 indicates MSAs submitted in the year following the year of injury, etc. While we only show 20 years, MSAs can certainly be submitted more than 20 years following the injury.

As the exhibit shows, the largest share of MSAs are submitted about four years after the injury. The number of submissions gradually decreases after that, but it is not uncommon to have a submission 20 or 25 years from the accident. The exhibit also shows that, on average, a very small number of MSAs are submitted in the same year as the year of injury.

## Maximum Number of MSA Submissions Occurs Four Years From the Year of Injury

Share of MSA Submissions by Age of Claim

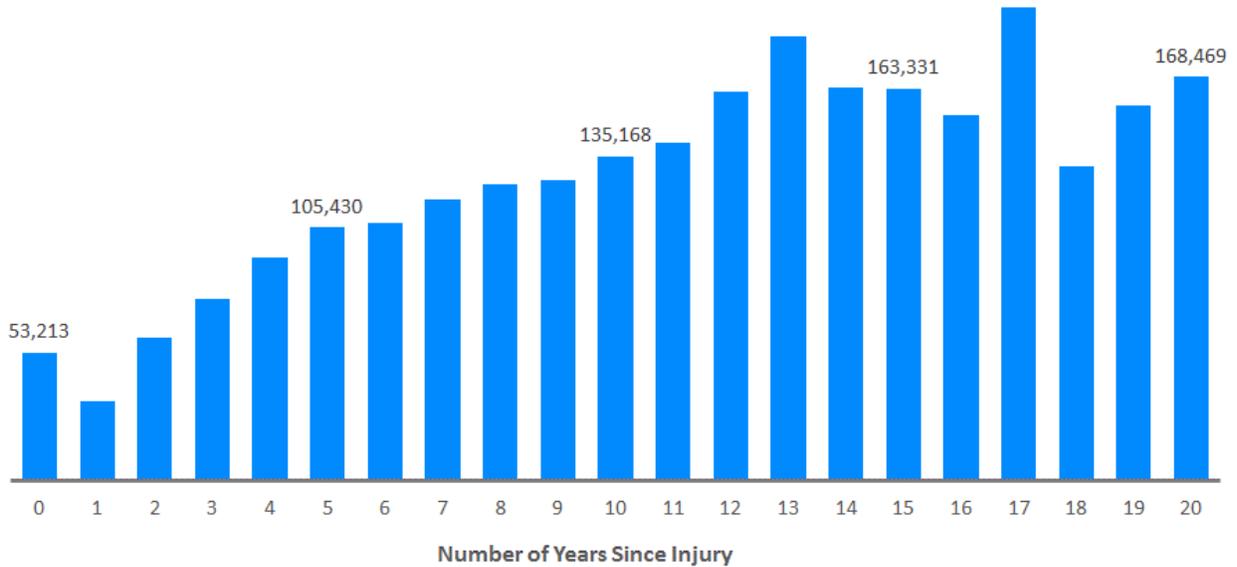


Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

**Exhibit 14**

The approved MSA amount increases as the time from the injury to the submission increases, as shown in Exhibit 15. Approved MSA amounts tend to increase until 13 or 14 years after the year of injury, but seem to level off at this point.

### Average Approved MSA Amount Increases as Time From Injury to Submission Increases



Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

**Exhibit 15**

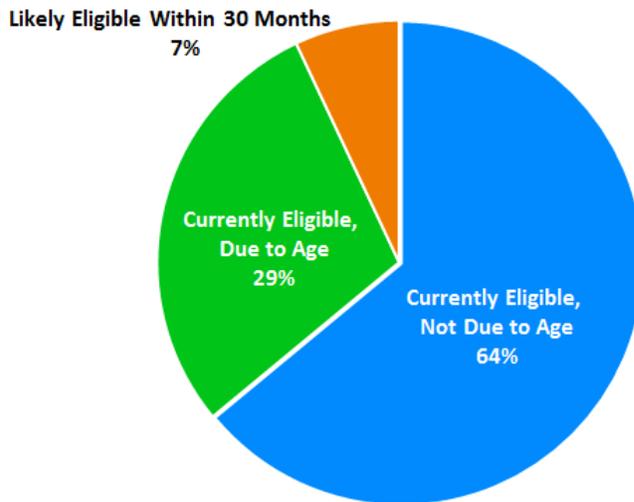
**MSA DEMOGRAPHICS**

Here we look at some of the general characteristics of MSA claims. Analyses in this section are based on submissions to CMS, not the MSAs approved by CMS.

Exhibit 16 shows the distribution of submissions by claimant Medicare eligibility at the time the MSA is submitted to CMS for review. Almost 95% of submissions are for claimants who are Medicare-eligible. In turn, the majority of these submissions are for claimants under 65 years of age. In comparison, according to the CMS Chronic Condition Data Warehouse (CCW) [4], for the general Medicare population, fewer than 20% of Calendar Year 2014’s enrollments were for individuals under 65 years of age.

## Most MSAs Are for Claimants Who Are Medicare-Eligible at the Time of Settlement

**Distribution of MSA Submissions by Medicare Status**

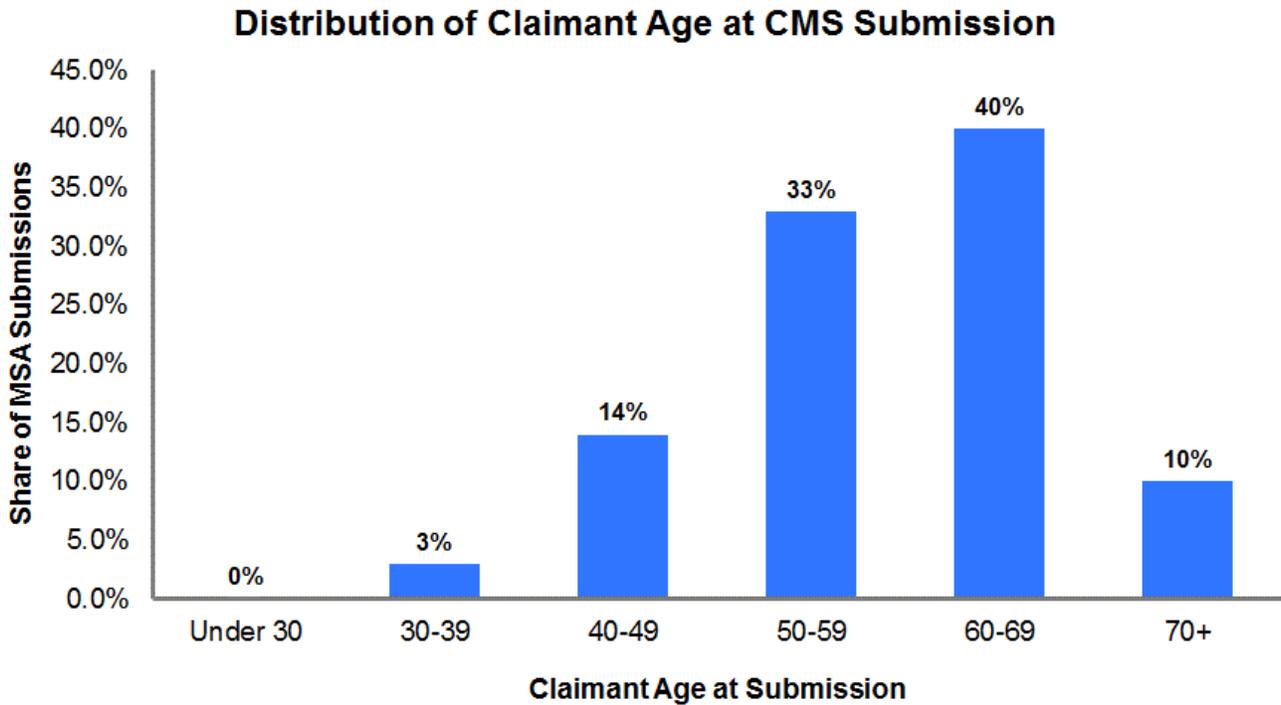


Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

**Exhibit 16**

Exhibit 17 displays the distribution of claimant age at the time of submission to CMS. The exhibit shows that more than half of the claimants are younger than 60. The exhibit also shows that the majority of MSAs reviewed by CMS are for claimants between ages 50 and 70. The average age at submission is 58 years. The median age is 59 years.

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



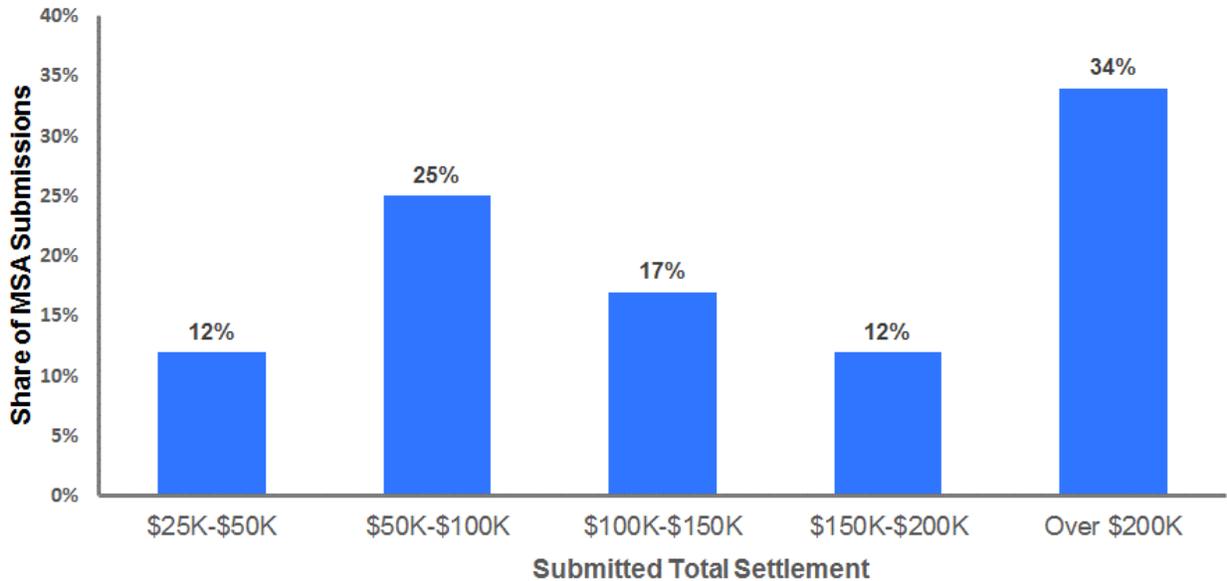
Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

**Exhibit 17**

Exhibit 18 examines the distribution of values of submitted total settlements. The submitted total settlement includes the MSA as well as indemnity costs, other medical costs not covered by Medicare, and attorney fees, when applicable. Approximately 65% of these settlements are greater than \$100K. The average total settlement size is approximately \$208K, while the median settlement size is approximately \$135K. As the exhibit shows, MSAs are often associated with large claim settlements.

## About 65% of Submissions Reviewed by CMS Are for Settlements Greater Than \$100K

**Distribution of MSA Submissions by Total Settlement Size**

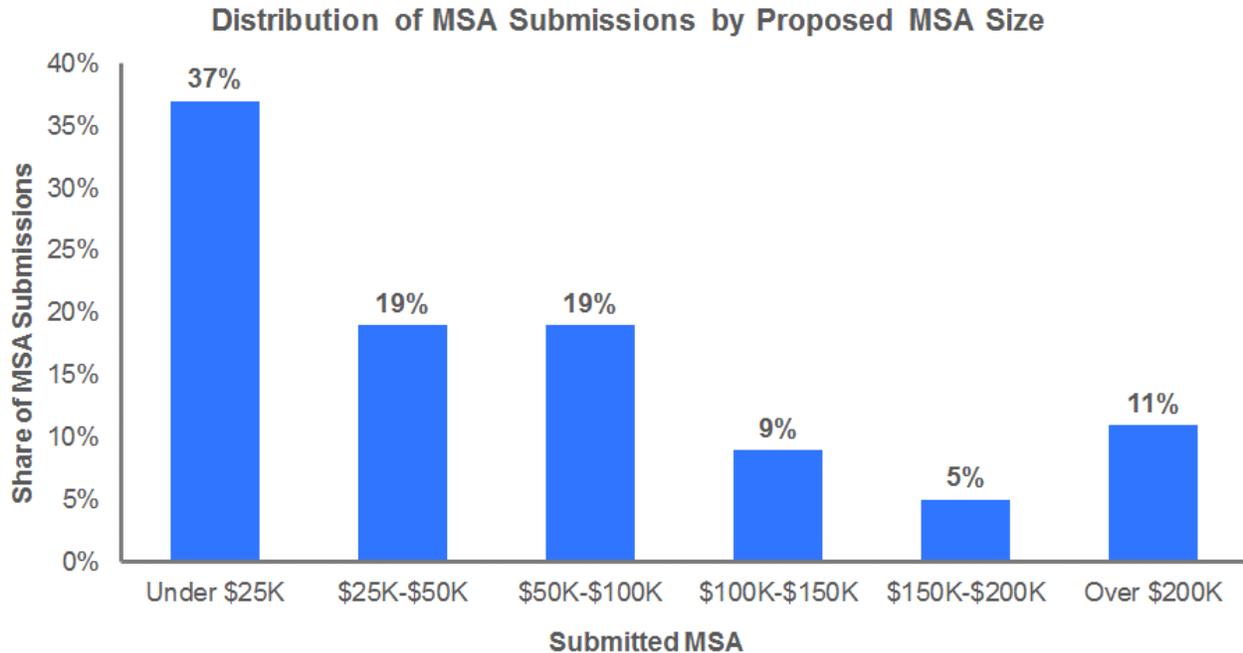


Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

**Exhibit 18**

Exhibit 19 shows the distribution of submissions by MSA size. While more than 65% of the submissions reviewed by CMS are for total submitted settlements that are more than \$100K, about 35% of the MSA submissions reviewed by CMS have submitted MSA amounts less than \$25K. In some cases, the submitted total settlement can be quite large, while the MSA component of the total settlement is relatively small.

## More Than 35% of Submissions Reviewed by CMS Have MSA Amounts Less Than \$25K



Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

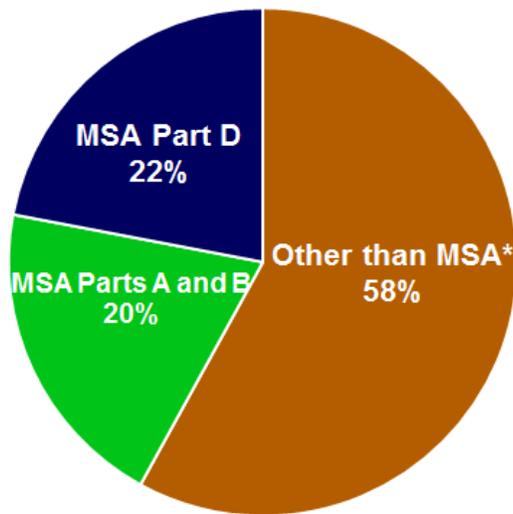
**Exhibit 19**

Exhibit 20 gives the distribution of settlement costs for MSAs submitted to CMS. This exhibit shows that MSAs represent about 45% of submitted total settlement costs. More than half of submitted MSA amounts are for prescription drugs (Medicare Part D), while the rest of the submitted MSA cost is attributed to other medical services (Medicare Parts A and B).

Further detail is given in Exhibit 20-a, which breaks down the cost distribution by size of submitted total settlement, showing that MSA costs are less than half across most settlement sizes.

## MSAs Are More Than 40% of Submitted Total Settlement Costs

**More Than Half of Submitted MSA Costs Are for Prescription Drugs**



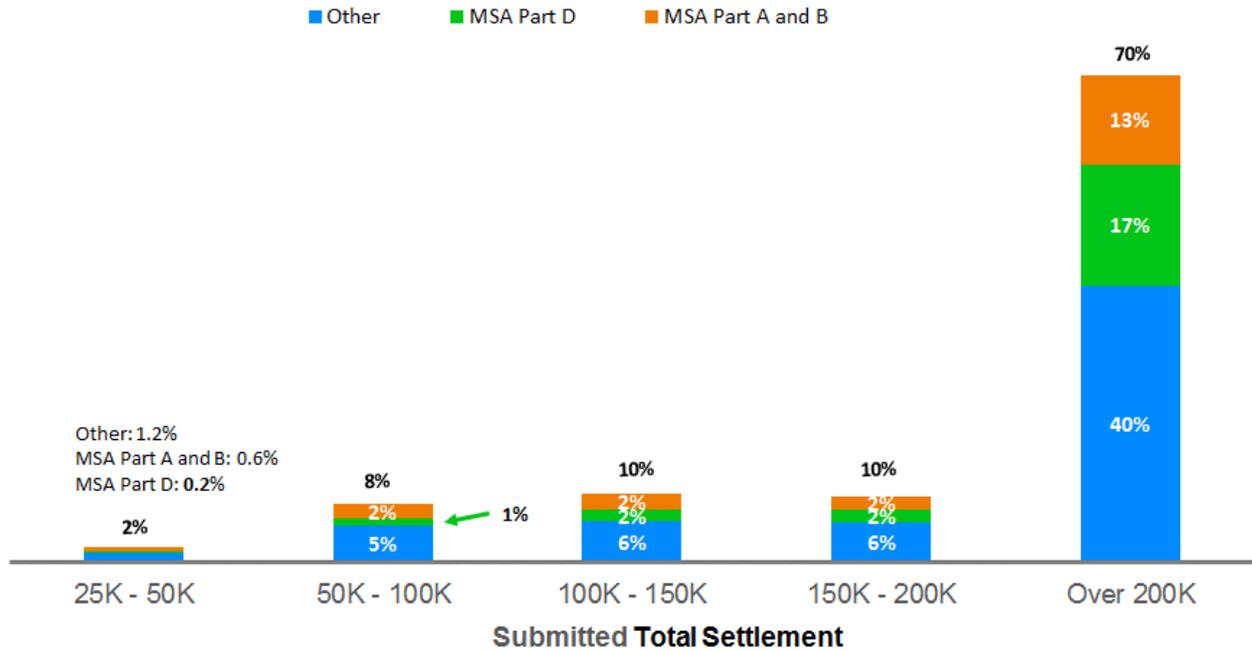
\*“Other than MSA” includes indemnity, medical not covered by Medicare, and other expenses such as attorney fees

Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

**Exhibit 20**

# Prescription Drugs Are at Least Half of MSAs Across Most Submitted Settlement Sizes

## Submitted Total Settlement Cost Distribution



Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

Exhibit 20-a

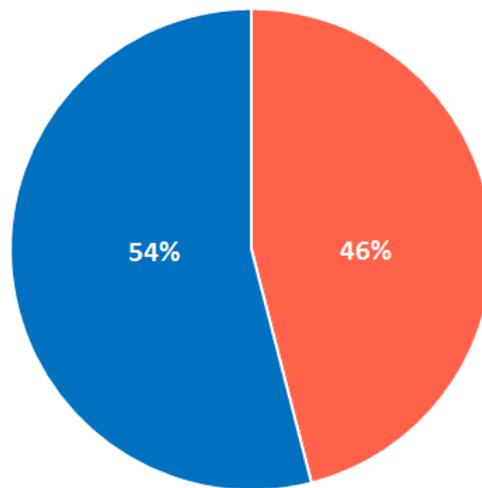
More than half of MSA claimants seek claimant attorney assistance when establishing MSA arrangements, as shown in Exhibit 21.

Additional detail is given in Exhibit 21-a, which breaks down the claimant attorney involvement by size of submitted total settlement, showing that attorney involvement does not seem to vary much by size of submitted total settlement.

## More Than Half of MSA Submissions Involve an Attorney

### Distribution of MSA Submissions by Claimant Attorney Involvement

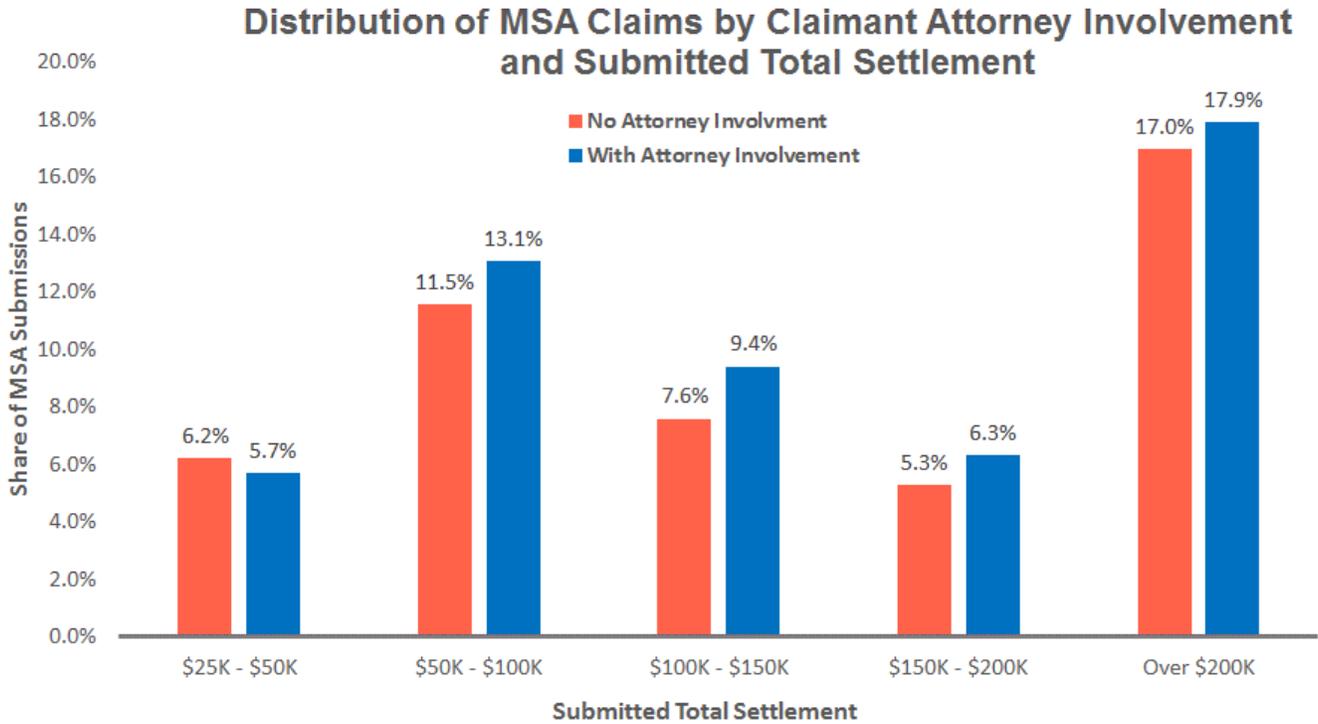
■ No Attorney Involvement    ■ With Attorney Involvement



Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

**Exhibit 21**

## Attorney Involvement Does Not Seem to Vary by Submitted Total Settlement



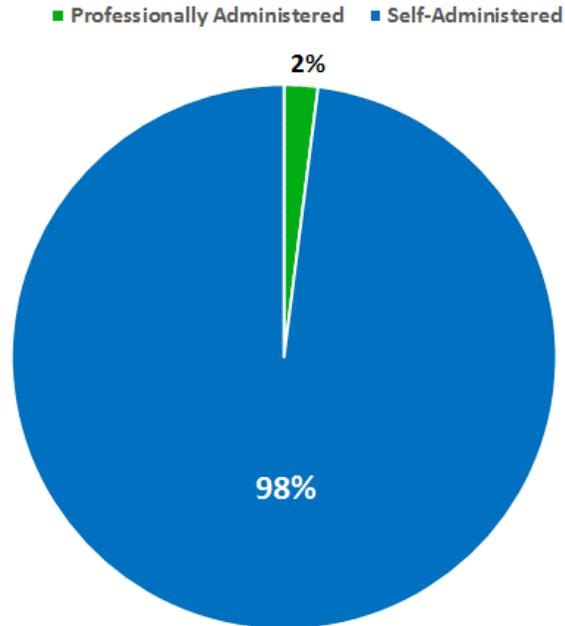
Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

**Exhibit 21-a**

Exhibit 22 breaks down the distribution of MSA claims by type of account administration. The exhibit shows that almost all MSA settlements are self-administered. Larger MSAs are more likely to be professionally administered than smaller MSAs.

## Almost All MSAs Are Self-Administered

### Distribution of MSAs by Administration Type



Source: NCCI analysis of data provided by ExamWorks Clinical Solutions and PMSI Settlement Solutions, LLC, an entity of Optum, for MSAs completed between January 2010 and December 2015 for submissions to the Centers for Medicare & Medicaid Services between September 2009 and December 2015. Data includes District of Columbia and all states except North Dakota and Wyoming.

**Exhibit 22**

**CLOSING REMARKS**

For many years, MSAs have been a significant share of workers compensation claim costs. After a period of dramatic lengthening, CMS's processing time for MSAs has recently declined. Average processing time in 2015 was about 70 days and is the shortest in recent history. Average approved MSA has also recently declined. Average approved MSA in 2015 was approximately \$103,000 and is the lowest in recent history. Due to the prescription drug component of MSAs, the ratio of CMS-approved MSA amounts to submitted MSA amounts has declined over the last five years. Prescription drug share increases as submitted total MSA settlements get larger. For submitted MSA settlements greater than \$100,000, the prescription drug share is about 60%. Maximum number of MSA submissions occurs four years from the year of injury. Most MSAs are for claimants under the age of 65 who are Social Security Disability beneficiaries, and more than half of MSA amounts are for prescription drugs. More than half of MSA submissions involve an attorney, while almost all MSAs are self-administered.

**APPENDIX****Excerpts From the US Government Accountability Office Report [2]****Related to MSA Processing Time**

**Page 16**—Ineligible submissions increased by about 148 percent from 2008 through 2011, growing from about 4,500 ineligible submissions in 2008 to about 11,200 ineligible submissions in 2011. Although mandatory reporting did not add any new WCMSA requirements, a CMS official told us the NGHP [Non-Group Health Plan] industry may be submitting more WCMSA proposals that are not eligible for WCRC [Workers Compensation Review Contractor] review because it wants documentation from CMS stating that a WCMSA did not meet CMS’s review thresholds.

**Page 16**—WCRC officials said that they have also seen an increase in \$0 WCMSA proposals. A workers compensation plan may submit these proposals when a settlement amount meets the minimum thresholds and is eligible for WCRC review, but the plan is asserting that it does not have responsibility for paying the beneficiary’s future medical expenses. WCRC officials told us that when an NGHP submits a \$0 WCMSA proposal, it may be seeking CMS confirmation that it does not have responsibility for paying the beneficiary’s future medical expenses.

**Page 23**—While the current WCRC contract does not include a performance standard related to the length of time for the WCRC to review submitted WCMSA proposals, WCRC officials told us they would like WCMSA reviews to be completed within 45 days.

**Page 24**—Also, CMS reported that a change made to the data system used by the WCRC to process WCMSAs resulted in a decrease in system performance, which significantly increased review time from September 2010 through January 2011, adding to the backlog of WCMSA proposals to be reviewed.

**Excerpt From the Workers’ Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide****Related to MSA Processing Time**

**Page 51, Section 15.1—Time Frame**—When you submit a WCMSA for review, CMS tries to review and decide on proposed settlements within 45 to 60 days from the time that all relevant documents are submitted.

**REFERENCES**

- [1] Barry Lipton, David Colón, John Robertson, and Daniel Stern, “Medicare Set-Asides and Workers Compensation,” NCCI, September 2014, [www.ncci.com/Articles/Documents/II\\_medicare\\_set\\_asides\\_research.pdf](http://www.ncci.com/Articles/Documents/II_medicare_set_asides_research.pdf)
- [2] “Medicare Secondary Payer,” United States Government Accountability Office, March 2012, [www.gao.gov/assets/590/589158.pdf](http://www.gao.gov/assets/590/589158.pdf)
- [3] *Workers’ Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide*, CMS, 2017, [www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/Downloads/WCMSA-Reference-Guide-Version-2\\_6.pdf](http://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/Downloads/WCMSA-Reference-Guide-Version-2_6.pdf)
- [4] *Medicare Enrollment Charts*, CMS Chronic Condition Data Warehouse, [www.ccwdata.org/web/guest/medicare-charts/medicare-enrollment-charts](http://www.ccwdata.org/web/guest/medicare-charts/medicare-enrollment-charts)

**ADDITIONAL SOURCES**

*Self-Administration Toolkit for Workers’ Compensation Medicare Set-Aside Arrangements*, CMS, 2015, [www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/Downloads/Self-Administration-Toolkit-for-WCMSAs.pdf](http://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/Downloads/Self-Administration-Toolkit-for-WCMSAs.pdf)

