

Evidence Based Medicare Set-Asides

A BETTER WAY TO MSA?



Since the roll out of the Medicare Secondary Payer Act (MSPA), self-insured employers and insurance professionals have found it increasingly difficult to settle their most complex and potentially costly claims. Many employers face financial uncertainty, with large inventories of claims that continue to develop and grow more expensive as injured workers age and their general health declines.

While most would agree acting to protect the future viability of Medicare is necessary, one could certainly argue the Centers for Medicare and Medicaid Services' (CMS) review process overestimates the projected cost of future medical treatment, driving up costs for Medicare Set-Asides (MSAs). In fact, there are two primary ways CMS' projections yield higher estimated costs than you should reasonably expect on your claims.

For one, CMS does not consistently base their treatment projections on evidence-based medicine, particularly when it comes to medication usage. Instead, they base their allocations on the injured worker's current medications and usage rates and apply that over the full remainder of their lives, even if doing so is neither realistic nor medically appropriate.

Secondly, CMS gives little weight to medical opinions that contradict recommendations of primary treating physicians, even in cases where one physician indicates the recommended treatment is unsafe for the injured worker due to age or underlying health conditions. Similarly, CMS disregards documented statements from the injured worker that they have no intention of pursuing a particular procedure.

This means, if they want CMS to approve their MSA, the employer or carrier must pay for treatment that in some cases

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won't take place, and this oftentimes places the cost of settling the claim out of reach. Even though the CMS approval process is completely voluntary, the vast majority of employers choose to pursue CMS' approval, fearing they could otherwise face the cost for additional treatment down the road.

But is there a way the employer can settle their claims without CMS' approval and avoid future liability for medical treatment? Enter the Evidence-Based Medicare Set-Aside (EBMSA).

Unlike the traditional Set-Aside, EBMSAs are based on clinical, and sometimes state-specific, evidence-based guidelines (such as ODG, ACOEM and MTUS). EBMSAs contemplate treatment that is both medically appropriate and reasonable, and they account for the anticipated decline in treatment over time, consistent with medical evidence and trends. They may also consider the opinions of medical legal evaluators, as well as other factors that might impact the nature and frequency of treatment, based on the facts of the specific claim. The end result is an MSA that is much more reality-based than the traditional Set-Aside, and it's fully in compliance with MSP guidelines!

An EBMSA can be managed by a professional administrator to ensure the funds are used appropriately. This protects both the employer and the injured worker. In the unlikely event funds are prematurely exhausted and

Medicare pursues a claim against the employer, many MSA partners commit to fully defending their product for the life of the injured worker, at no additional cost. If they're not successful, most EBMSA companies carry insurance to cover the full exposure amount, so there is no risk to the employer.

Since the EBMSA is not submitted for CMS approval, settlement negotiations can begin as soon as the EBMSA is prepared. This means employers can settle their claims more quickly and potentially at a lower cost than if they used a traditional MSA.

If you've been disillusioned with the traditional MSA process, an EBMSA may be a viable alternative to explore. Your claims team would be happy to assist if you'd like to discuss using an EBMSA on your program.



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