



Service: MSPA (Medicare Secondary Payer Accreditation)
Module: LEARNING MODULE 6
Medicare Set-Asides, Part 2
Non-Submit MSAs, Policy Guidance Regarding Non-Submit MSAs, LMSAs, and LMSA Rulemaking
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Summary

Module 6 of the MSPA certification program, presented by Brendon De Souza and Kristina Bonanno, delves into advanced topics surrounding Medicare Set-Asides (MSAs), focusing on non-submit MSAs, liability MSAs (LMSAs), and policy and regulatory frameworks shaping these mechanisms. This module emphasizes strategic compliance and the evolving landscape of MSP regulations.

Submitted vs. Non-Submitted MSAs: The session highlights the differences between traditional submitted MSAs and non-submitted MSAs. While submitted MSAs require formal review and approval by the Centers for Medicare and Medicaid Services (CMS), non-submitted MSAs bypass this process. Instead, non-submit MSAs rely on evidence-based guidelines to allocate future medical costs, offering greater flexibility and cost efficiency. Despite industry skepticism, non-submit MSAs are defensible, provided they are well-documented and adhere to national and state evidence-based guidelines.

CMS has recognized non-submit MSAs in its policy documents, particularly in the 2022 update to the WCMSA Reference Guide. However, concerns about CMS's "worst-case scenario" methodology persist, especially regarding opioid allocations, which can perpetuate dependency rather than encouraging treatment reduction.

CMS Re-Review and Amended Review Processes: For submitted MSAs, CMS offers limited avenues for contesting determinations:

1. **Re-Review:** This addresses mathematical errors, missing documentation, or submission errors. Re-reviews are restrictive, allowing only one request per category.
2. **Amended Review:** Introduced in 2017 and expanded in 2023, this process accommodates cases with significant changes in care or funding needs, provided specific criteria are met. While effective, both processes emphasize the importance of accurate and comprehensive initial submissions.



Liability MSAs (LMSAs) and Regulatory Challenges: Liability settlements involving future medical expenses pose unique challenges. Unlike workers' compensation MSAs, LMSAs lack formal regulatory guidance. The 2011 Benson Memo serves as a rudimentary reference, stating that LMSAs are unnecessary if a treating physician certifies no future care is required. However, CMS's withdrawal of proposed LMSA rulemaking in 2014 and 2020 leaves the industry without clear directives. A conservative approach recommends creating LMSAs for liability claims when future medical expenses are anticipated.

Hybrid Claims: Hybrid claims, involving both workers' compensation and liability components, require careful handling. CMS advises using workers' compensation fee schedules to prepare MSAs in such scenarios, and these MSAs can be submitted to CMS for approval. This underscores the need for tailored strategies for multi-faceted claims.

Practical Implications: Non-submit MSAs are gaining traction due to their cost-saving potential and reduced administrative burden. They are particularly advantageous in cases involving opioids or when CMS's determinations inflate costs unnecessarily. Vendors offering non-submit MSAs often provide indemnification to address concerns about future Medicare disputes.

Module 6 equips professionals with tools to navigate the complexities of advanced MSA topics. By leveraging evidence-based guidelines, understanding CMS review processes, and approaching liability and hybrid claims conservatively, stakeholders can ensure compliance while optimizing settlements. As MSP regulations evolve, staying informed about policy updates and industry trends remains critical for effective claims management.

Learning Objectives

1. Understand the distinctions between submitted and non-submitted Medicare Set-Asides (MSAs) and the rationale for each approach.
2. Analyze the re-review and amended review processes for addressing CMS determinations on submitted MSAs.
3. Explore the benefits and limitations of evidence-based non-submit MSAs in comparison to traditional MSAs.
4. Examine policy guidance and legal frameworks, including CMS updates, on liability Medicare Set-Asides (LMSAs).
5. Apply compliance strategies for hybrid claims involving both workers' compensation and liability components.

Primary Takeaways



1. CMS provides options for re-review and amended review of submitted MSAs, though these processes are limited and lack a formal appeal structure.
2. Non-submit MSAs, grounded in evidence-based guidelines, offer flexibility and cost-efficiency while maintaining compliance with Medicare's interests.
3. Policy updates, including CMS's acknowledgment of non-submit MSAs, have clarified their defensibility but left room for industry debate.
4. Liability MSAs remain a complex area with minimal guidance, requiring case-by-case analysis and conservative approaches to future medical care allocations.
5. Hybrid claims involving workers' compensation and liability components require nuanced handling, often defaulting to workers' compensation fee schedules for MSA preparation.

Course Outline

- 1) Introduction to Medicare Set-Asides (MSAs)
 - a) Definition and Purpose
 - i) Allocating funds for future Medicare-covered medical expenses.
 - ii) Ensuring compliance with the Medicare Secondary Payer (MSP) Act.
 - b) Submitted vs. Non-Submitted MSAs
 - i) Submitted: Processed and approved by CMS.
 - ii) Non-Submitted: Evidence-based, bypassing CMS submission.
- 2) Submitted MSA Reviews
 - a) CMS Re-Review Process
 - i) Grounds for re-review (e.g., mathematical errors, missing documentation).
 - ii) Limitations on additional submissions and documentation.
 - b) CMS Amended Review Process
 - i) Criteria: Significant changes in care or funding after one year.
 - ii) Treated as a new submission with comprehensive documentation.
- 3) Non-Submitted MSAs
 - a) Evidence-Based Medicine
 - i) Use of national and state guidelines for cost-effective allocations.
 - ii) Advantages in addressing issues like opioid dependency.
 - b) Defensibility and CMS Policy
 - i) 2022 policy updates clarifying non-submit MSA compliance.
 - ii) Indemnification options from vendors to mitigate future risks.
- 4) Liability Medicare Set-Asides (LMSAs)
 - a) Lack of Comprehensive Guidance
 - i) Limited policy references, including the 2011 Benson Memo.



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- ii) Proposed rulemaking efforts in 2012 and 2020 without resolution.
 - b) Conservative Approaches
 - i) Preparing LMSAs for settlements involving future Medicare-covered care.
 - ii) Relying on physician certifications to satisfy Medicare's interests.
- 5) Hybrid Claims
 - a) Definition and Challenges
 - i) Claims involving both workers' compensation and liability components.
 - ii) Necessity for MSAs based on workers' compensation fee schedules.
 - b) CMS Review
 - i) Treating hybrid MSAs as standard workers' compensation MSAs.
 - ii) Submission options and policy guidance.
- 6) Conclusion
 - a) Summary of Key Points
 - b) Preparing for Future Policy Changes and Industry Trends

NOTE: Artificial Intelligence was used in the creation of this document.