

01/13/2022

RE: Proposed Medicare Set-Aside Arrangement for:  
Beneficiary/Potential Beneficiary  
Medicare ID:  
Date of Injury (DOI): 11/30/2017  
CMS Case Control Number (CCN):

Dear

The Centers for Medicare & Medicaid Services (CMS) received a letter stating that you and settled a workers' compensation matter on 11/17/2021 for an incident that occurred on or about 11/30/2017. The letter notes that you and agreed to set aside a certain amount for your future medical care related to the workers' compensation illness or injury, but decided to forgo CMS' established Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) review process for this settlement.

Section 1862(b)(2)(A) of the Social Security Act prohibits the Medicare program from making payment where payment was made or may reasonably be expected to be made by another party. 42 C.F.R. 411.46 specifically allows Medicare to deny payment for treatment of work-related conditions if a settlement does not "adequately protect Medicare's interest"—that is, does not include enough money to pay for treatment of those conditions. Because you did not seek prior review and approval by CMS of the amount set aside in your settlement for your future medical care, Medicare will not pay for the treatment of your work-related condition until you have demonstrated the appropriate exhaustion of your "net" settlement proceeds. Please review the enclosed package for information about the submission of annual attestations. Once you have shown that the settlement proceeds (total settlement amount minus procurement costs such as attorney fees, and minus funds repaid to Medicare for care prior to the date of settlement) have been exhausted, Medicare will make payment again. If you have questions about this letter, please call RO-09 CUSTOMER SERVICE at (415) 744-3658.

Sincerely,

RO-09 CUSTOMER SERVICE

Enclosure

cc:

## **ADMINISTERING YOUR LUMP SUM WORKERS' COMPENSATION MEDICARE SET-ASIDE ARRANGEMENT (WCMSA)**

You have chosen to personally administer the WCMSA account established as part of a workers' compensation settlement, judgment, award, or other payment. It is important that you understand the Centers for Medicare & Medicaid Services' (CMS) policies regarding WCMSA accounts.

In order to comply with Section 1862(b)(2) of the Social Security Act, Medicare is not permitted to pay for medical items or services, including prescription drug expenses, related to the workers' compensation claim until the WCMSA amount is appropriately exhausted ("properly spent") on related medical care that is covered and otherwise reimbursable by Medicare ("Medicare covered"). Where a workers' compensation settlement, judgment, award, or other payment is less than the WCMSA amount, Medicare is not permitted to pay for related medical care until the whole settlement, judgment, award, or other payment is properly spent on related medical care. The WCMSA funds must be placed in an interest-bearing account. Funds in the account must not be used for any purpose other than payment of future medical care that is Medicare covered and is related to the workers' compensation claim, or for certain allowable expenses. For details on setting up and using the account, see the WCMSA Reference Guide and the Self-Administration Toolkit at <http://go.cms.gov/wcmsa> on the CMS website.

Funds in a WCMSA account may not be used to purchase a Medicare supplemental insurance policy or a Medigap policy, or to pay for the premiums for such policies.

Once the funds in the WCMSA account have been properly spent on Medicare-covered items and services related to the claimant's workers' compensation claim and Medicare has been provided with proof the account has been properly spent, Medicare will begin paying for the claimant's Medicare-covered items and services that are related to the workers' compensation claim. Medicare will pay for items and services covered by Medicare that are unrelated to the workers' compensation claim according to Medicare's payment rules.

Basic instructions for establishing and administering a WCMSA account are listed below; more thorough instructions can be found in the Self-Administration Toolkit mentioned above (<http://go.cms.gov/wcmsa>). If you have any further questions regarding these requirements, please contact the Medicare Regional Office (RO) assigned to you. You can find a list of ROs at <http://cms.gov/regionaloffices/> on the CMS website; scroll to the Downloads section near the bottom of the page. For questions about annual attestations or annual accountings, contact the BCRC – Customer Service Representatives are available to assist you Monday through Friday, from 8:00 a.m. to 8:00 p.m., Eastern Time, except holidays, at toll-free lines: 1-855-798-2627 (TTY/TDD: 1-855-797-2627 for the hearing and speech impaired).

## Establishing and Using Your Medicare Set-Aside Account

- WCMSA funds must be placed in an interest-bearing account, separate from your personal savings or checking account.
- WCMSA funds may only be used to pay for medical items and services and prescription drug expenses related to your workers' compensation claim that would **normally be paid by Medicare**, or for certain allowable expenses.
- If you have a question regarding Medicare's coverage of a specific item, service, or prescription drug, please call 1-800-MEDICARE (1-800-633-4227) or visit CMS' website at <http://www.medicare.gov/> where you can search for the item, service, or drug to see if it's covered.

**Note:** If funds from the WCMSA account are used to pay for services other than Medicare-allowable medical and prescription drug expenses related to the workers' compensation claim, Medicare will not pay injury-related claims until these funds are restored to the WCMSA account and then properly spent.

### Record Keeping

- You may use the WCMSA account to pay for the following costs that are directly related to the account:
  - Document copying charges
  - Mailing fees or postage
  - Any banking fees related to the account
  - Income tax on interest income from the set-aside account
- As administrator of the account, you will be responsible for keeping accurate records of payments made from the account. These records may be requested by the BCRC as proof of appropriate payments from the WCMSA account.
- Annually, you must sign and submit a copy of the attached attestation letter, which states that all payments from the WCMSA account were made for Medicare-covered medical and prescription drug expenses related to the workers' compensation claim, or for allowable expenses.
- You may optionally submit your annual attestation electronically using the WCMSA Portal. An attestation submitted on the WCMSA Portal will be immediately processed. For more information on using the WCMSA Portal, see the resources list at <http://go.cms.gov/wcmsa>.
- The annual attestation must be submitted online in the WCMSA Portal or by mail to the BCRC at the address listed on the first page of these instructions no later than 30 days after the end of each reporting year, which starts with the date the account is established and ends on that date in the following year.
- The annual attestation must continue through depletion of the WCMSA account.

- In the event that you die before the funds in the WCMSA account are depleted, the account will continue to exist for payment of any outstanding bills for work-related injury medical expenses and prescription drug expenses that would otherwise be covered by Medicare. For instructions related to the disbursement of remaining funds, please follow the instructions under Section 19.2 in the most recent version of the WCMSA Reference Guide at <http://go.cms.gov/wcmsa>.

**DO NOT SEND YOUR ANNUAL ATTESTATION DIRECTLY TO CMS. Please send your annual attestation to the BCRC or submit electronically on the WCMSA Portal.**

## Workers' Compensation Medicare Set-Aside Arrangement (WCMSA)

### Attestation of Expenditure for Lump Sum Account

This attestation should be completed annually or when your annual funds run out, whichever comes first, and mailed to the BCRC at "NGHP, PO BOX 138832, Oklahoma City, OK 73113," or electronically on the WCMSA Portal starting one year from the date the account is established.

**Note:** Please make several copies of this document if you are submitting by mail, because you must send it to the Benefits Coordination & Recovery Center (BCRC) each year until all of your WCMSA funds have been appropriately exhausted (properly spent).

Claimant Name: \_\_\_\_\_

Claimant Medicare ID (MBI, HICN, or SSN): \_\_\_\_\_

Date: \_\_\_\_\_

Total Settlement amount: \_\_\_\_\_

Settlement procurement costs: \_\_\_\_\_

Total set-aside amount: \_\_\_\_\_

Individuals may only use the funds in the WCMSA account to pay for Medicare-covered and otherwise reimbursable items and services that are related to the workers' compensation claim.

(Please circle one.)

1. I, the undersigned, attest that I have a **lump sum** WCMSA account and have used the monies from the WCMSA account for the period of \_\_\_\_\_ to \_\_\_\_\_ to pay for the following:

Medical services:                   \$ \_\_\_\_\_

Prescription drug expenses:    \$ \_\_\_\_\_

2. I, the undersigned, attest that I have a **lump sum** WCMSA account and have **COMPLETELY EXHAUSTED** the monies in the WCMSA account for the period of \_\_\_\_\_ to \_\_\_\_\_ to pay for the following:

Medical services: \$ \_\_\_\_\_

Prescription drug expenses: \$ \_\_\_\_\_

I acknowledge and understand that failure to appropriately exhaust my WCMSA amount on Medicare-covered and otherwise reimbursable items and services, including prescription drugs, related to my workers' compensation claim will result in Medicare denying payment for related medical items and services up to the "net" workers' compensation settlement, judgment, award, or other payment amount, whichever is less.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Witness Date

**CMS reserves the right to audit how you spent the funds in your WCMSA account. Therefore, CMS recommends that you retain your WCMSA records for a period of seven (7) years. However, please do not send your receipts or bank statements to CMS or the BCRC except on request.**