

July 13, 2017

CMS Offers Chance at Second (Amended) Review

One of the questions we most frequently encounter is, “Will Medicare Re-Consider this MSA if Claimant’s Circumstances Change?”. For some time, the answer has been “No.” However, as of July 10, 2017, CMS has changed course, albeit with very strict limitations.

The Centers for Medicare and Medicaid Services (CMS) has issued an updated version of the Workers’ Compensation Medicare Set-Aside Portal (WCMSAP) User Guide. (Version 5.1, July 10, 2017.) This Guide is predominantly utilized by vendors for the electronic submission of Medicare Set-Aside (MSA) plans to CMS. However, here CMS utilized this source for the dissemination of their new Amended Review guidelines.

The Guide can be found here:

<https://www.cob.cms.hhs.gov/WCMSA/assets/wcmsa/userManual/WCMSAUserManual.pdf>

In this new update, the Guide sets forth a new process for re-review of previously approved Workers’ Compensation Medicare Set-Aside plans (WCMSA). Under the new guidelines, when the parties disagree with the decision on a case, or if projected care for a case has changed so much that the new proposed settlement amount differs from CMS’ approved amount by 10% or \$10,000 (whichever is greater), they can, *in limited situations*, submit a re-review request. Parties may request re-review from CMS via an “Amended Review” option available through the CMS electronic submission portal.

CMS has placed the following requirements on the process:

-This review option may only be exercised one time per case and if CMS denies the request the application may not be re-submitted. There cannot be a previous request for Amended Review.

-The original MSA case must have been submitted between one and four years from the current date. (As such, a case cannot be resubmitted immediately after a CMS determination if you don’t like the results. Further, cases that were determined many years ago would be ineligible as likely outside of the time period.)

-There must result in a 10% or \$10,000 change (whichever is greater) in CMS’ previously approved amount. The New Proposed MSA Amount can be greater than or less than the Approved MSA Amount, as long as the difference is at least 10% or \$10,000 (whichever is greater).

Example: An example of this would be a MSA approved by CMS 2 years ago in the amount of \$100,000. The parties are within the 1-4 year timeframe. Here the threshold for review would be \$10,000 or 10% as 10% of the total is \$10,000.

If the parties determined that the prescription medications have adjusted such that the revised MSA is now \$85,000, the difference would be \$15,000 or 15% of the total approved MSA. This 15% exceeds the 10% threshold and thus the file would be reviewable.

Securing Amended Review will not likely be a particularly easy task as CMS has been clear to note that they will, per usual, require detailed medical and prescription records to back up all claims. CMS must be provided with a new proposed MSA amount and all additional medical details noting the additional medical treatment OR the evidence showing the new lack of treatment.

Despite this, the new procedure is a good opportunity to obtain a second review in claims where circumstances clearly have changed or the parties are able to reduce costs within this timeframe. It provides an opportunity to potentially move claims toward settlement that otherwise might be barred by the Medicare process.

Note that this process does not impact the *traditional* reasons (again, limited) that CMS will consider re-review of a MSA: 1) where it is asserted that the CMS determination includes obvious mistake or error (mathematical error is essentially what they will overturn or clearly not recognizing that a surgery has already occurred and accidentally pricing it again) OR 2) where the parties can provide additional evidence that was not reviewed by CMS, but was dated prior to the WCMSA submission. CMS will still allow re-consideration of claims in such situations as this is outside the scope of this limited Amended Review process.

Should you seek Amended Review **Atlas Settlement Group, Inc.** would be happy to assist. Please reach out to us at **404-926-4160** with any questions regarding the new process.