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MEMORANDUM

**DATE:** May 11, 2011

**FROM:** Acting Director  
Financial Services Group  
Office of Financial Management

**SUBJECT:** Medicare Secondary Payer--Workers' Compensation--INFORMATION

**TO:** Consortium Administrator for Financial Management and Fee-for-Service Operations

The purpose of this memorandum is to reiterate guidance provided in the Centers for Medicare & Medicaid Services' (CMS') July 23, 2001, July 11, 2005, and April 25, 2006 procedure memoranda regarding CMS' Workers' Compensation Medicare Set-aside Agreement (WCMSA) proposal review thresholds, which can be found on CMS' Web site at: <http://www.cms.gov/WorkersCompAgencyServices>.

Submission of a WCMSA proposal to CMS for review and approval is a recommended process. There are no statutory or regulatory provisions requiring that a WCMSA proposal be submitted to CMS for review. However, if an entity chooses to use the WCMSA review process, CMS requests that it comply with the established policies and procedures referenced on its Web site. Claimants, employers, carriers, and their representatives should be encouraged regularly to monitor this dedicated workers' compensation Web site for changes in policies and procedures.

With respect to these policies and procedures, it is critically important to note the following information:

1. Medicare reviews certain workers' compensation (WC) settlements in order to protect Medicare's interests under the Medicare Secondary Payer Statute [codified at 42 U.S.C. Section 1395y] and its implementing regulations. [Ref: 7/23/01 Memo Q1(c)]. **Note:** A WCMSA should not be submitted to CMS when the resolution of the workers' compensation claim results in the medical portion of the claim is being left open.
2. A WCMSA meets CMS' criteria for review when the following thresholds are met:
  - The claimant is currently a **Medicare beneficiary** and the total settlement amount is **greater than \$25,000; OR**
  - The claimant has a "reasonable expectation" of Medicare enrollment **within 30 months of the settlement date and** the anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be **greater than \$250,000.**

3. The CMS no longer reviews new WCMSA proposals if the above thresholds are not met. However, CMS wishes to stress that these threshold requirements reflect a CMS operational workload standard. These requirements do not constitute a substantive dollar or “safe harbor” threshold. It remains true that Medicare beneficiaries still must consider Medicare's interests in all WC cases and ensure that Medicare is the secondary payer to WC in such cases.
4. Both the beneficiary and non-beneficiary review thresholds are subject to change. [Ref: 7/11/05 Memo Q2; 4/25/06 Memo]. CMS reserves the right to modify or eliminate these thresholds, doing so relative to a proper consideration of Medicare’s interests.

Your staff may direct questions or concerns on the above referenced policies and procedures to Frank Johnson of my staff at (410) 786-2892.

A handwritten signature in cursive script that reads "Charlotte Benson". The signature is written in black ink on a light-colored background.

Charlotte Benson