Western District of New York
Medicare Secondary Payor Protocol

Application for Medicare Secondary Payor (MSP) compromise with regard to Medicare concerning future medical treatment must be made jointly by the Medicare beneficiary, or his representative, and the primary plan. Prior to any application filed with the U.S. Attorney's office for the Western District of New York (WDNY), Medicare must have been notified of the pending liability claim, the settlement of same and the letter from the Medicare Secondary Payor Regional Contractor (MSPRC) that the conditional payment obligation concerning repayment for historical medical items and services related to the tort was resolved or provide adequate assurance to that effect.

The application for MSP compromise concerning payment for the future medical items and services related to the tort shall include:

1. A copy of the MSPRC letter stating the matter concerning repayment for historical medical items and services related to the tort was reviewed and resolved or provide adequate assurance to that effect.
2. Proposed Liability Medicare Set-aside Arrangement concerning payment for the future medical items and services related to the tort (LMSA)[1].
3. An agreed copy of the settlement agreement subject to completion of the MSP obligations.
4. A joint statement from the applicants that warrants the following:
    a. The value of the agreed settlement equals or exceeds $350,000.00.
    b. The plaintiff is a Medicare beneficiary as that term is defined under 42 C.F.R. §400.202.
    c. The Centers for Medicare and Medicaid Services (CMS) was requested to approve the LMSA, but no substantive response has been received for at least 60 days from the date of the letter to CMS; and
    d. An affidavit from the preparer of the LMSA that it is true and correct based on the Medicare beneficiary's medical records and the injuries being released as well as in conformance with the WCMSA submission checklist as published by CMS. See https://www.cms.gov/WorkersCompAgencyServices/Downloads/samplesubmission.pdf.

Subsequent to the application by the U.S. Attorney's Office for the WDNY, the U.S. Attorney may request additional information from the parties, including, but not limited to, a request for an additional LMSA(s), and upon receipt of all required information, issue a Release. The release issued by the U.S. Attorney's Office for the WDNY will compromise the LMSA obligations related to the settlement, judgment, award or other payment.

Exclusions: The WDNY MSP Protocol is not available for liability cases involving mass torts. This protocol confers no substantive rights and may be used or withdrawn at the unilateral discretion of the United States Attorney's Office of the Western District of New York. This is a voluntary process and not policy of the CMS.

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[1] *Set-Aside Arrangement – An administrative mechanism used to allocate a portion of a settlement, judgment or award for future medical and/or future prescription drug expenses. A set-aside arrangement may be in the form of a Workers' Compensation Medicare Set-Aside Arrangement (WCMSA), No-Fault Liability Medicare Set-Aside Arrangement (NFSA) or Liability Medicare Set-Aside Arrangement (LMSA).*

For more information or questions regarding the Western District of New York, Medicare Secondary Payor Protocol, please contact:

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