

## MSA Decision Chart & Flowchart

### When is an MSA Appropriate?

A Medicare Set-Aside Arrangement is appropriate as part of a settlement when it is reasonable to anticipate that an injured individual will continue to require injury-related treatment at the time they become Medicare-entitled. CMS offers a voluntary review program for Workers' Compensation Medicare Set-Asides (WCMSAs) that qualify by meeting certain workload review thresholds.

*Submission of an MSA to CMS for approval is not required and remains a voluntary process.*

Existing Criteria at Time of Settlement	Total Settlement Amount	CMS Submission Appropriate?	Identify Conditional Payments?
Entitled to Medicare	Under \$25K	No	Yes
Entitled to Medicare	Over \$25K	Yes	Yes
Not entitled to Medicare (next 30 months)	Over \$250K	No	No
Not entitled to Medicare (next 30 months)	Under \$250K	No	No
Will be entitled to Medicare (next 30 months)	Under \$250K	No	No
Will be entitled to Medicare (next 30 months)	Over \$250K	Yes	No

Source: WCMSA Reference Guide v3.9 (May 2023)

### When Review Thresholds Are Not Met

Primary payers and practitioners still need to determine the best way to consider Medicare's interests. One approach may be to consider establishing internal "non-threshold" protocols regarding how settlements that do not meet CMS' review thresholds are handled. This may entail including a "non-threshold MSA" or similar medical cost projection as part of a non-threshold settlement.

### Total Settlement Authority (TSA)

The calculation of the TSA includes, but is not limited to, indemnity (lost wages), attorney fees, all future medical expenses (including prescription drugs), repayment of any Medicare conditional payments, and any previously settled portion of a WC claim. If an annuity is used to fund any of the above, the total payout should be used, not the cost or present value of the annuity.

### Reasonable Expectation

1. Claimant is receiving Social Security Disability (SSD) benefits at the time of settlement
2. Claimant has applied for SSD benefits or has applied and been denied but anticipates appealing the decision
3. Claimant is in the process of appealing and/or re-filing for SSD benefits
4. Claimant is age 62.5 or greater at the time of settlement
5. Claimant has End-Stage Renal Disease or Lou Gehrig's Disease but does not yet qualify for Medicare based on these conditions

# MSA Flowchart

