

# THE MSA TODAY

- MSA NEWS/UPDATES FROM CATTIE, P.L.L.C. - @MSALAWYER -

## WELCOME TO THE MSA TODAY!

Here's another edition of the MSA Today. Consider this our Halloween edition. You might be one of those who think MSAs are indeed a scary thing. The type of thing that makes for a good horror movie if handled incorrectly. The type of thing that keeps you awake at night if you ignore the issue.

Welcome back to our return readers! If this is your first time reading the MSA Today, congratulations! You've come across one of the only places to get MSA updates from the legal perspective.

While the law does not "require" Medicare Set-aside Arrangements (MSAs), the law does require that Medicare remain as a secondary payer when another entity is responsible for medical expenses related to a settlement/judgment/award under a workers' compensation plan, an automobile plan, a liability insurance plan or a no-fault plan. And this has always been the case under the Medicare Secondary Payer Act.

Too often, folks miss the forest for the trees on MSA issues. They seek a black/white MSA requirement in the liability context, or they strictly follow informal policy memos or reference guides from CMS in the workers' compensation context. Instead, following what the law says and what the regulations say about MSAs and future medicals will lead you to the proper endpoint. You can use the law to navigate your path through the creepy forest.

The goal here is to be educational, informative and have a bit of fun. While nothing here is intended to provide you legal advice about a current or previous case, I'd be happy to weigh in on those as well if you engage Cattie, P.L.L.C. for that purpose.

Your feedback is critical to a successful newsletter. Please reach out with your comments, suggestions and constructive criticism. Send that to me in an email at [jcattie@cattielaw.com](mailto:jcattie@cattielaw.com), via Twitter @MSALawyer or by phone at (704) 232-7297. With that, please read below and learn more about recent MSA developments.

## CMS (STILL) NOT REQUIRING LMSAS

As many of you know, the Centers for Medicare & Medicaid Services (CMS) announced earlier this year that starting October 2, 2017, it would begin rejecting certain

reimbursement claims from medical providers, directing them to collect from the patient's Liability Medicare Set-aside Arrangement (LMSA). To read the entire notice, click [here](#). Some have mistakenly categorized this to be a LMSA requirement from CMS. Not the case. Enhanced enforcement, yes, but not a LMSA requirement.



Now that 10.2.17 has come and gone, I have already seen some claims adjusters/examiners begin making LMSA funding a requirement of settlement. Before they take that step (and create an exposure that might not exist in the claim), they should understand the legal obligations under federal law to fund an LMSA. The proper question is ask is whether a future medical obligation exists under the MSP Act. Most MSA vendors will not be able to answer this since most MSA vendors are not law firms and do not practice law.

An MSA legal opinion, however, does answer that question. Asking for a MSA legal opinion from a lawyer can help contain costs on an issue which is not yet ripe while completely shielding the client from the feds in the unlikely event the feds seek post-settlement future medical dollars. This is an area to watch over the next 3-6 months and adjust your client's MSP protocols accordingly, including having a MSA law firm on your client's approved vendor list so you can empower them to hire the right solution for the right claim. For more info about why it's a good idea to have a law firm on your vendor panel, please click [here](#).

## "ENHANCED ENFORCEMENT" OF FUTURE MEDICAL OBLIGATIONS IN LIABILITY AND NO-FAULT SITUATIONS

Earlier this year, CMS alerted the medical community nationwide about a new billing protocol. Starting in October 2017, CMS told medical providers to begin expecting CMS to reject certain reimbursement claims. Under those special circumstances, CMS would advise the medical provider to collect repayment from the patient's LMSA or No-Fault Medicare Set-aside Arrangement (NFMSA).

On September 19, 2017, CMS provided clarity to medical providers about this new procedure. Medicare issued an article under the Medicare Learning Network (MLN) titled "Accepting Payment from Patients with a Workers' Compensation Medicare Set-Aside Arrangement (WCMSA), a Liability Insurance Medicare-Set Aside Arrangement (LMSA), or a No-Fault Insurance Medicare Set-Aside Arrangement (NFMSA). The article explained what a MSA is and explains why it is appropriate to accept payment from a patient that has a funded MSA. To see the article, please click [here](#).

Now, if you actually clicked on that link, you saw that CMS rescinded the article as of October 3, 2017. Apparently, lobbying groups approached CMS and asked CMS to stop all action until stakeholders had a chance to comment. Why the comments these groups submitted to CMS a mere 5 years ago as part of the [LMSA regulatory process](#) are now

insufficient for CMS, one can only wonder. Needless to say, it appears CMS may take a step back and listen again to stakeholder feedback about LMSAs.

One curious thing though. The September 19th article above also included WCMSAs. WCMSAs have been standard operating process for a decade plus. But CMS has now rescinded the article explaining to providers how to collect bills from a MSA, including a WCMSA. Does that mean that WCMSAs are no longer a thing? Of course it doesn't. And the rescission of the article does not in any way diminish or extinguish legal obligations under the MSP Act.

Medicare has a statutory right under federal law to remain a secondary payer where another entity has accepted responsibility for medical expenses. Under the terms of most workers' comp, auto, liability insurance and no-fault insurance settlements, plaintiffs are agreeing to be responsible for future medicals related to the settlement in exchange for a lump sum. If future medicals were a damage component used by counsel to drive up the value of the case and the plaintiff will need future medicals, be certain that CMS will expect that the plaintiff received dollars for future medicals in the settlement, regardless of whether they are specifically allocated or exist within the lump sum. Plaintiffs and counsel should continue to be wary of this issue. Best practices dictate that you should be identifying whether a portion of a settlement is being paid for future medicals and if so, how much. Only then can you be sure whether a future medical obligation exists under the MSP Act.

## MEDICARE SECONDARY PAYER AND MEDICAL PROVIDERS: THE DEVIL'S IN THE DETAILS



A new patient sits in your waiting room. They fill out your intake paperwork, your staff visits with them, your doctor diagnoses their condition and sets forth a course of action. Surgery, prescription medications, etc. At check out, the patient instructs the billing department to bill Medicare for the visit. Your staff does just that. Happens every day. Did you know that doing so might violate federal law?

To read the entire article, please click [here](#).



## CMS TO ISSUE NEW MEDICARE CARDS

You may or may not know that CMS will be issuing new Medicare cards. The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) requires Medicare to remove Social Security Numbers from all Medicare cards by April 2019. That process has begun and Medicare is moving forward with alerts and announcements letting the public

know about these changes. How this will affect the Medicare Secondary Payer compliance world is unknown at this time, though we can expect some disruption to accompany the change. For more information, please click [here](#).

MSA Legal Opinion from Law Firm		VS.	MSA Allocation from MSA Vendor	
<b>Criteria to Consider for Best MSA Results</b>				
Applies	Attorney/Client Privilege?		Does Not Apply	
Applies	Work Product Privilege?		Does Not Apply	
Law Does Not Require	"Consider and Protect" Medicare?		Law Requires	
Yes	Flexible Approach?		No	
Yes	Protected by Conclusion from CMS?		No	
MSA Legal Opinion	Best Option for the File?			

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## ONLY 75 DAYS UNTIL 2018

Believe it or not, 2017 is almost done. Halloween is right around the corner, then comes Thanksgiving followed quickly by the holiday season. Do you have a goal of closing your file before 2017 is finished? Then you need to think now about addressing the file's looming MSA issue. Don't wait and let that single issue cause the file to stay open into 2018.

When you choose to address the MSA issue, call Cattie to obtain a MSA Legal Opinion. Instead of the standard MSA Allocation from a vendor, you get a legal opinion applying the specific facts of your case/claim to the MSP law itself. The MSA Legal Opinion is written by lawyers and provides you legal advice on the MSA issue, something most vendors cannot provide. You will establish an attorney/client relationship, meaning that your communications are privileged as well as the work product (if you wish). Plus, the legal opinion stands in the shoes of a CMS approved MSA, meaning that you can close the file faster, more effectively and for a cost comparable to your current MSA vendor. The chart

above explains the differences between the MSA Legal Opinion and the MSA Allocation. When you compare the two, the preferred option is clear.

Cattie, P.L.L.C. is currently accepting new clients who want to extinguish all future medical exposure under the MSP Act. Do you want to do that? If so, it's time to call Cattie.



## EXTINGUISH YOUR FUTURE MEDICAL EXPOSURE

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## TALK TO US AT A FUTURE CONFERENCE

- October 20, 2017 [Vermont Assn. for Justice](#), Burlington, VT
- October 24-25, 2017 [VA Workers' Comp Educational Conference](#), Richmond
- November 3-4, 2017 [VTLA Workers' Comp Retreat](#), Richmond, VA
- November 8-10, 2017 [LASIE Annual Conference](#), Lake Charles, LA