

The MSA Today

Breaking MSA News/Updates from @MSALawyer

Welcome to the MSA Today!



Cattie, P.L.L.C. is a law firm dedicated to helping clients comply with the legal obligations imposed by the Medicare Secondary Payer (MSP) Act, specifically when it comes to future medical exposure. To do that, the law firm applies legal concepts of compensability, causation, responsibility, liability, policy limits, statutory caps and allocation/apportionment in order to extinguish a client's future medical exposure completely.

The MSA Today is a newsletter that provides readers with periodic updates about recent MSA events. Is there a statutory change in the works? Did Medicare promulgate new regulations about MSAs? Has Medicare issued a policy alert, memo or reference guide change? You can find that and more by reading below. The MSA Today is your one stop to get caught up with all things MSA.

Of course, the law does not "require" MSAs. Then again, it does not require you to "consider and protect" Medicare's interests either. What it does mandate is that Medicare will not pay for medicals (but for one exception) where payment has been made under a workers' comp plan, an auto plan, a liability insurance plan or a no-fault plan. While the MSA is one option to make sure Medicare is not billed prematurely, it's not the only option. However, since the MSA is what everyone knows about, I'll refer to the generic term 'MSA' when I mean to also include all other possible vehicles which could be used to ensure Medicare does not get billed prematurely.

The goal here is to be educational, informative and (dare I say) have some fun with the topic of MSAs. While nothing here is intended to provide you legal advice, 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, via Twitter @MSALawyer or by phone at (704) 232-7297. With that, please read below and learn more about recent MSA developments.

Our Most Recent Articles



Why You Need A Law Firm on Your MSA Vendor Panel

Imagine you manage a baseball team. It's the bottom of the eighth inning. You're leading 3-2, but your star right-handed pitcher has loaded the bases. Coming to the plate is the league leader in home runs and he's a left-handed batter. You look to the bullpen for a left-handed relief pitcher who stands a much better chance against him. But all you have are right handed pitchers. They all have the same skill set and do not provide the right skill set to face off against this special batter. While you can get a fresh arm, you do not get the statistical advantage of the righty/lefty switch.

I'm willing to bet your MSA vendor panel suffers from the same condition. For the majority of employers/insurance carriers out there with a MSA vendor panel, the panel is composed entirely of MSA vendors who look at MSA issues through a similar prism. They review medical records to figure out future Medicare covered future medicals, provide a



Winter is Coming: LMSA Issues and Ethical Obligations Facing Plaintiff Lawyers

"Winter is coming." That three word statement resonates throughout the Game of Thrones series. It serves both as a reminder for the wary and a warning for the ignorant. Times may be good now, but they will get worse quickly when Winter arrives. Winter in the seven kingdoms meant the arrival of the White Walkers. Winter for plaintiff attorneys handling injury cases involving future medical expenses means the federal government and Liability Medicare Set-aside Arrangements (LMSAs).

The penalties under federal law have been well-documented. Single, double or (perhaps) treble damages for failure to address these obligations properly. Other potential penalties, though, have been less discussed. **The purpose of this article is to demonstrate why plaintiff lawyers must be wary of potential LMSA issues in light of state rules of professional**



MSAs the Legal Way: Why You Overpay for MSAs

On its face, the workers' compensation industry suffers from a lack of options in the marketplace to deal with MSA issues. Experienced MSA vendors continue to proclaim that the law requires you to "consider and protect Medicare's interests" without providing common sense solutions and precise citations to that part of the law. They continue to provide MSAs based on medical record review. While those reports have a place in certain situations, they fail to address the MSA issue properly most of the time. Unknowingly, stakeholders in the workers' compensation world rely on medically based MSAs to their detriment, both legally and financially.

This article addresses the "legal" way to calculate MSAs. MSAs address legal obligations under federal law, not medical obligations. It makes sense, then, to review the law and regulations which create that obligation. When you do, you confirm to your chagrin what your

report to you with that figure (regardless of how it may relate to the actual settlement of the claim) and then tells you the only safe avenue is to seek CMS review/approval of the MSA. If all members of the MSA panel give you the same advice, what's the benefit of having a panel with multiple members? **Every primary payer in the country should diversify its MSA vendor panel to include at least one law firm.**

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

conduct. For plaintiff lawyers, Winter is coming.

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

CFO might already tell you: you pay too much for your MSAs. **If you applied a legal approach to MSAs instead of the medical approach currently used, your MSAs would be cheaper and just as compliant as the medically based MSAs calculated today.**

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

"Enhanced Enforcement" of LMSAs Goes Live October 2, 2017

Earlier this year, CMS alerted the medical community nationwide about a new procedure. Starting in October 2017, CMS told medical providers to begin expecting CMS to reject certain reimbursement claims. Under those special circumstances, CMS will advise the medical provider to collect repayment from the patient's LMSA. Some have taken this and interpreted it to mean that a new LMSA requirement comes October 2, 2017. I disagree.



I view this as "Enhanced Enforcement." See, the law's not changing and CMS is not promulgating new regulations about MSAs. Remember there is nothing on the law or regulations today about MSAs. Instead, this is CMS putting everyone on notice that it intends to be more vigilant about the bills it pays on behalf of its beneficiaries. As a taxpayer, this should make you happy. The law prohibits Medicare from paying (but for one exception) when payment has been made under a liability insurance plan. That means that if a liability settlement is being paid to fund a plaintiff's future medical (in part or in full), Medicare should not get billed until that amount allocated to future medicals is spent down and exhausted on future medicals. Nothing about an MSA, but everything about making sure Medicare is not billed prematurely.

Expect lots of vigorous discussion, debate and misunderstanding about this as the calendar turns to Q4 2017. For those of you feeling MSP wonky, click [here](#) to review the Change Alert 9893 which provided notice to the medical community in February 2017 and the detailed steps CMS is taking to implement this change.

MSA Legal Opinion from Law Firm		VS.	MSA Allocation from MSA Vendor	
Criteria to Consider for Best MSA Results				
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?			
Cattie, P.L.L.C. A Higher Standard in MSA Compliance				
www.cattielaw.com			@MSALawyer	

CMS Selects New WCMSA Review Contractor

CMS selected Capital Bridge, LLC to be its new WCMSA review contractor on September 1, 2017. This was an eagerly anticipated announcement by those in the MSA industry. CMS awarded the new contract to Capital Bridge, LLC for a total of \$60.7 million, far in excess of the previous contract awarded in 2012 totaling just under \$6 million.

According to its website, "Capitol Bridge is a Government Services firm headquartered in the Washington Metropolitan area with offices in Arlington, Virginia, Washington, D.C., and Columbia, Maryland. We are an SBA certified 8(a) firm with extensive experience providing services in several areas including: Eligibility and Enrollment, Case Management, Claims Management, Records and Data Management, Cyber Security, Acquisition Support, and Financial Management. Capitol Bridge maintains a diverse array of Federal clients and currently holds several prime contracts with the United States Army and the Federal Aviation Administration; we have also served as a subcontractor to numerous Federal, State and Local agencies, and private sector clients."

Based on the size of the contract, I would expect that CMS intends to exercise its option to ask Capital Bridge to review LMSAs starting in 2018. What else could explain the 10x multiple on the contract price only 5 years later? Stay tuned for much more on this developing issue.

CMS Issues Revised WCMSA Reference Guide

In July 2017, CMS issued version 2.6 of its WCMSA Reference Guide. This revision provided some significant changes such as the amended review process set forth in Section 16. I covered those changes in my previous edition of the MSA Today.

For my money, the biggest change was the subtle linguistic shift by CMS to advise that MSAs should be funded based on what is actually being paid for in the settlement as opposed to injuries alleged as part of the claim. Did you catch that?

For example, see Section 3.0 at the end of the first paragraph. Previously, it said: "When a proposed WCMSA amount is submitted to CMS for review and the claimant (who may or may not be a beneficiary) obtains CMS' approval, the CMS-approved WCMSA amount must be properly spent before Medicare will begin to pay for care related to the beneficiary's WC claim."

Now, it says: "When a proposed WCMSA amount is submitted to CMS for review and the claimant (who may or may not be a beneficiary) obtains CMS' approval, the CMS-approved WCMSA amount must be appropriately exhausted before Medicare will begin to pay for care related to the beneficiary's settlement, judgment, award or other payment."

This is great news for all WC stakeholders, especially when a WC claim has been denied in part or in full. Remember that submitting MSAs to CMS for review/approval is always voluntary, never mandatory unless you've made that a condition of the settlement agreement. There are legal ramifications to this shift by CMS, so make sure to ask @MSALawyer to provide you legal advice about those ramifications.

To review the new CMS WCMSA Reference Guide, please click [here](#).

7 FACTS MYTHS **7**
About MSAs

<p>1 <i>Myth: The law requires parties to "consider and protect" Medicare's interests.</i></p>	<p><i>Fact: The law does not require parties to "consider and protect" Medicare's interests.</i></p>
<p>2 <i>Myth: The law requires Medicare Set-Asides (MSAs).</i></p>	<p><i>Fact: The law does not require MSAs under any circumstance.</i></p>
<p>3 <i>Myth: The law requires MSAs to be submitted to CMS for review/approval.</i></p>	<p><i>Fact: The law does not require MSAs to be submitted to CMS for review/approval under any circumstance.</i></p>
<p>4 <i>Myth: CMS requires all MSAs to be submitted for review/approval.</i></p>	<p><i>Fact: CMS does not require all MSAs to be submitted for review/approval.</i></p>
<p>5 <i>Myth: CMS requires some MSAs to be submitted for review/approval.</i></p>	<p><i>Fact: CMS does not require any MSAs to be submitted for review/approval.</i></p>
<p>6 <i>Myth: The current MSA process is geared toward the "best interest of the claimant".</i></p>	<p><i>Fact: The current MSA process creates operational and ethical issues for all stakeholders.</i></p>
<p>7 <i>Myth: MSAs are the only way to address future medicals under the law.</i></p>	<p><i>Fact: Options other than MSAs (like legal opinions) are available to comply under the law.</i></p>

The MSA Truth is Black and White
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Talk to Us at a Future Conference

- September 27, [NAMSAP Annual Meeting](#), Baltimore, MD
- October 4, [NC Workers' Compensation Educational Conference](#), Raleigh, NC
- October 8, [SC Workers' Compensation Educational Conference](#), Myrtle Beach, SC
- October 24, [Virginia Workers' Compensation Commission Educational Conference](#), Richmond, VA

