

MDTL MEMBERS
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CMS Releases Policy Memo Addressing Liability Medicare Set Asides (L-MSAs)

The Centers for Medicare and Medicaid Services (CMS) has released a policy memorandum (dated September 29, 2011) pertaining to liability Medicare set-aside (L-MSA) arrangements.

To obtain a copy of CMS' September 29, 2011 memo, go to <http://exactmail.atlanticbt.net/link.php?M=1069705&N=1655&L=3218&F=H>.

Per CMS, “[t]he purpose of this memorandum is to provide information regarding proposed Liability Medicare Set-Aside Arrangement (LMSA) amounts related to liability insurance (including self-insurance) settlements, judgments, awards, or other payments (‘settlements’).”

Through this memo, CMS indicates that the agency will consider Medicare's interests regarding future medicals to be “satisfied” upon procurement of specific information from the plaintiff's treating physician as follows:

Where the beneficiary's treating physician certifies in writing that treatment for the alleged injury related to the liability insurance (including self-insurance) ‘settlement’ has been completed as of the date of the ‘settlement,’ and that future medical items and/or services for that injury will not be required, Medicare considers its interest, with respect to future medicals for that particular ‘settlement,’ satisfied. If the beneficiary receives additional ‘settlements’ related to the underlying injury or illness, he/she must obtain a separate physician certification for those additional ‘settlements.’

If the physician certification as referenced above is obtained, CMS states that it is unnecessary to submit the certification or a proposed L-MSA amount for review purposes. The agency indicates further that CMS will *not* provide the parties with “confirmation” that Medicare's interest regarding future medicals is satisfied. Rather, CMS “encourages” the plaintiff and/or his/her representative to maintain the physician's certification.

On this point, the memo states as follows:

When the treating physician makes such a certification, there is no need for the beneficiary to submit the certification or a proposed LMSA amount for review. CMS will not provide the settling parties with confirmation that Medicare's interest with respect to future medicals for that ‘settlement’ has been

satisfied. Instead, the beneficiary and/or their representative are encouraged to maintain the physician's certification.

CMS states that the above guidelines and procedures are effective "upon publication of this memorandum."
