Medicare's authority to review WC cases:

- **The Law:** Section 1862(b)(2) of the Social Security Act (42 USC 1395y(b)(2)) requires that Medicare payment may not be made for any item or service to the extent that payment has been made or can be reasonably expected to be made under a workers’ compensation law or plan.

- **Section 1862(b)(5)(D) and (b)(6)** require that CMS and its providers and suppliers ask beneficiaries about payers that may be primary to Medicare.
Compromise vs. Commutation

- **Compromise** - settlement awards or agreements that intend to compensate an individual for medical expenses incurred prior to the date of settlement.

- **Commutation** - settlement awards or agreements that intend to compensate an individual for any medical expenses after the date of settlement.
Combined Settlement

- A single WC settlement agreement can possess both WC compromise and commutation aspects.
Medicare Set-Aside Arrangements:

- Apply strictly to WC settlements that involve a commutation aspect (i.e., those settlements intended to award the claimant for future medical benefits and/or release the WC carrier from future responsibility for medical benefits).
Decisions regarding Medicare Set-Aside Arrangements are independent of any decision regarding any claims that Medicare may have paid in the past. Any identified claims for past injury-related services must be reimbursed to the Medicare Trust Fund.
First Report of WC Case Should Be Made To:

The Coordination of Benefits Contractor (COBC) at the following address:

Medicare - Coordination of Benefits Contractor
MSP Claims Investigation Project
P.O. Box 5041
New York, NY 10274-5041
-or-
1-800-999-1118
Medicare Approval of a Commutation Set-Aside Proposal is RECOMMENDED

- Claimants who are entitled to Medicare (Part A, B, or both) REGARDLESS of the settlement amount;

- Claimants with a “reasonable expectation” of Medicare enrollment within 30 months of the settlement date AND a total settlement of greater than $250,000.00. Until the individual actually becomes entitled to Medicare, funding for an approved WC Medicare Set-aside arrangement must not be used to pay the claimant’s medical expenses.
For the status of a claimant’s Medicare entitlement, contact the Social Security Administration:

1-800-772-1213

www.ssa.gov
What is Reasonable Expectation?

Reasons include but are not limited to:

- The claimant has applied for Social Security Disability Benefits;

- The claimant has been denied Social Security Disability Benefits; anticipates appealing and/or re-filing for Social Security Disability Benefits;

- The individual is 62 years and 6 months old

- The individual has an ESRD condition but does not yet qualify for Medicare based upon ESRD
As a general rule:

- If the claimant is less than 65 years old, and has been receiving Social Security Disability benefits for 2 years or more, they would usually be entitled to Medicare.

- If the claimant is 65 years or older, they are usually entitled to Medicare.
NOTE: New Address for Submission of Workers’ Compensation Medicare Set-Aside Arrangement (WCMSA) Proposals for CMS Review

Effective May 1, 2004, all WCMSA proposals submitted for review by CMS’s Regional Offices are being sent to a national, centralized point of receipt at:

CMS
c/o Coordination of Benefits Contractor
PO Box 660
NY, NY 10274-0660

Attention: WCMSA Proposal

U.S. Postal Only
A cover letter must include the following information for all WCMSA proposals:

- Claimant’s Name, DOB, Health Ins. Claim Number or Social Security Number (SSN) if claimant is not yet entitled to Medicare
- Claimant’s Address and Phone Number
- Claimant’s Release
- Claimant’s Counsel: Name, address, phone number
- Entitlement Information
- Employer: Name, Address/Phone Number
- WC Insurer
Medicare Set-Aside Proposal Requirements (2 of 4)

- Attorney Representing Employer or WC Insurer
- WC Insurer
- Attorney Representing Employer or WC Insurer
- Injury/Disease Date
- Type of Injury/Disease
- Total WC Settlement Amount
- Proposed Medicare Set-aside Amount
Medicare Set-Aside Proposal Requirements (3 of 4)

Documentation that must be available to CMS prior to the approval of a WCMSA:

- Life Expectancy
- Life Care Plan
- Proposed WC Settlement Agreement
- Current Treatment
- Future Treatment
- Patient Medical Recovery Prognosis
- Total Amount
- Amount of Future Medical Treatment
Medicare Set-Aside Proposal Requirements (4 of 4)

- Administrator
- WCMSA Account
- Fees
- Final WC Settlement Agreement
Medicare Set-Aside Basics

- Set-Aside funds should be sufficient to last the remainder of the claimant’s estimated life expectancy (unless documented otherwise).
- Set-Aside funds may **ONLY** be used to pay for injury-related services that would otherwise be covered by Medicare.
- A Set-Aside arrangement is still required for doctor visits for prescriptions, monitoring, blood tests, x-rays, etc., wherever applicable.
Common Medicare-Covered Services

- Doctor’s visits
- Diagnostic tests
- Steroid injections
- Hospitalizations

- Surgery
- Morphine pumps
- TENS Stimulators
- Physical Therapy
Common Services that are NOT currently covered by Medicare

- Prescription medications
- Dentures
- Glasses
- Hearing aids
- Travel Expenses to medical appointments
- Custodial Care
For specific Medicare coverage questions, please visit our web site at:
www.medicare.gov
or call:
1-800-MEDICARE
(1-800-633-4227)
Things You Can Do To Improve The Set-Aside Proposal Process

- Submit complete case files with your set-aside proposals utilizing Medicare Set-Aside Proposal Requirements Checklist.
- Respond to letters and telephone requests for information in a timely manner.
- Limit status calls to office unless 45 days have elapsed from date of submission of a complete file.
- Try not to schedule a hearing date prior to receiving approval of your set-aside proposal.
- Share the procedures in this presentation with your colleagues.
Submissions of CD-ROM’s

- Submitter Letter
- Consent Form
- Rated Age Information/Life Expectancy
- Life Care Plan
- Settlement Agreement
- Medical Records — start with first report of injury and then chronologically through the most recent treatment
- Payment History
- Future Treatment Plan
- Miscellaneous
Additional WCSA Resources and Updates:

- Websites
  
  http://www.cms.hhs.gov/, enter
  Cursor to “FAQ's”, enter
  In Search Text Field type “MSP”, enter
  In Search Text Field Type “Workers Compensation”, enter

- MSP Open Door Forums
  Email (mspcentral@cms.hhs.gov)
Once COBC receives these documents, they are recorded in a centralized database, the WCMSA proposal will be electronically forwarded to the Regional Office having jurisdiction for review as listed in the April 23, 2003 Frequently Asked Questions at the following URL.


Any WCMSA proposal received in CMS’s Regional Offices on or after May 1, 2004, will be forwarded to the Coordination of Benefits Contractor for entry into the centralized database.
Questions?