

# MSA Insider



Getting You to Settlement



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## ***BIG CHANGES FOR MSAs; Prescription Drug Pricing***

The Centers for Medicare & Medicaid Services (CMS), the entity that manages Medicare, released a new policy memorandum regarding Medicare Set-Asides dated April 3, 2009. The pertinent portion of the memo states:

*“The CMS will begin independently pricing future prescription drug treatment costs/expenses in WCMSA proposals beginning June 1, 2009. Effective with complete WCMSA submissions received by CMS’ Coordination of Benefits (COB) Contractor on or after June 1, 2009, where the WC related injury warrant(s) the need of prescription drugs for the ongoing treatment of the WC related injury, CMS’ independent pricing of the prescription drug amount will be calculated and priced using average wholesale price (AWP). The CMS will not use or recognize any other pricing, discounting, or calculation methods when determining the adequacy of the prescription drug amounts in WCMSA proposals.”*

Currently, CMS is not independently pricing prescription drugs and it is accepting a good-faith effort when it comes to determining the adequacy of an MSAs prescription drug proposal. That is all going to change on June 1.

According to this recent memo, CMS will determine if a “WC injury warrants the need of prescription drugs.” But CMS has not provided a definition of ‘warrants’. Does that mean MSAs have to include only those drugs that the claimant is currently taking or also include drugs taken in the past that were effective? CMS does not say.

Furthermore, CMS does not indicate how long prescription drugs have to be priced for. If a person is experiencing low back pain and is taking an expensive pain medication, does that drug have to be priced for two years, three years, or for the claimant’s life time? Due to CMS inconsistencies in the past, the industry is unsure how CMS will apply these new rules to prescription drug pricing.

MedAllocators will monitor this situation closely and as soon as more information is made available, it will provide its clients with recommendations and suggestions for handling this important new development.

### **MSA for General Liability**

To assist clients in complying with the Medicare Secondary Payer Act, MedAllocators offers a full line of products and services focused on general liability cases. These services include Liability Medicare Set-Asides (LMSA), Medicare Lien Evaluations (MLE) and Pre-Settlement Lien Negotiations.

In compliance with the MSP, MedAllocators recommends that self-insurers, TPAs, and insurance companies consider utilizing these services in order to protect Medicare’s interest when settling all claims. General liability cases should be addressed in anticipation of future enforcement by CMS.

MedAllocators has developed these products to help clients comply with Medicare and to get cases settled faster and more efficiently.