



# GAO Releases Study of Medicare Secondary Payer and WCMSAs

On April 3, 2012, the Government Accountability Office (GAO) released its study of Medicare Secondary Payer provisions and Section 111 Reporting issues in response to Congressional requests. The report may be found at <http://www.gao.gov/assets/590/589158.pdf>

Within the broad ranging report which identifies a series of administrative “challenges” that CMS claims to be addressing, is data with respect to the number of WCMSAs on an annual basis from 2008 to 2011.

WCMSA submissions increased from 20,255 in 2008 to 28,847 in 2011.

CMS indicated that one reason for the increase is submissions of WCMSAs with \$0 future medical and settlements under the thresholds. It was suggested by CMS that it was not staffed to serve as confirmation to WCMSA submitters that settlements with \$0 future medical were not subject to MSP.

Payments to the WCRC by CMS increased from \$3.8 million in 2008 to \$6.7 million for 2011.

CMS continues to lump into the amount claimed as savings associated with workers’ compensation MSP, all savings from claims denials and recoveries. In addition, CMS is reporting savings for all WCMSA amounts (including WC, Liability and No-fault) to have increased from \$905 million in 2008 to \$1.1 billion for 2011. The amount for workers’ compensation only increased from \$137 million for 2008 to \$142 million for 2011.

Again, CMS is including in the total approved WCMSA savings amounts the total amounts approved in each fiscal year that represent the maximum cost –avoided savings that could potentially be realized through these WCMSAs in the future. While CMS acknowledges this does not accurately project the year in which the savings would actually have been avoided, it believes that it does provide some additional information about the extent to which Medicare is getting cost-avoided savings through the WCMSA process. CMA is not able to track savings attributable to WCMSAs that are not submitted to, and approved by, CMS.

Bottom line for WCMSA reform is that CMS acknowledges that it has a number of administrative challenges that it is addressing, it apparently does not want WCMSA under threshold to be submitted, and although it is claiming WCMSA savings it acknowledges that the claimed savings include all potential and not actual savings and the amounts identified in each year are not representative of the amounts saved on an annual basis.

The fact that CMS is noting that it is not staffed to process submissions below the threshold is helpful to us in seeking WCMSA reform legislation. The lack of clear GAO reform recommendations to address WCMSA processes and procedures, however, means that we need to continue to press for good data and for legislative action.