



CMS Posts Reiteration of Workload Thresholds Policy for WCMSAs

In response to backlog concerns expressed by UWC and a coalition of insurers, self-insured employers and their representatives, CMS released a policy memo dated May 11, 2011 which reiterates the CMS policy that it would accept workers' compensation settlement agreements for review only if

The claimant is currently a Medicare beneficiary and the total settlement amount is greater than \$25,000;
or

The claimant has a "reasonable expectation" of Medicare enrollment within 30 months of the settlement date and the anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be greater than \$250,000.

The memo can be found at

<http://www.cms.gov/WorkersCompAgencyServices/Downloads/May112011Memorandum.pdf>

In meetings to discuss the backlog of WCMSA submissions, CMS officials noted that some 30% of the backlog in WCMSA submissions was due to submissions they determined to be below threshold. CMS administrative policy, however, requires that these below threshold submission be included for review because CMS does not know if it is really below threshold until it is reviewed. The average time for submission review before approval has grown in recent months to 120 days.

Even though CMS is now discouraging the submission of settlements with total settlement values of \$25,000 or less, the memo still reiterates that the operational thresholds are not "safe harbors" and CMS reserves the right to change the thresholds at any time and to assure that Medicare is the secondary payer in any case, including those with total settlement amounts below the operational threshold.