

Three Ways to Avoid a Liability Medicare Set-Aside (LMSA)

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Avoiding an LMSA should be the first goal when dealing with a Medicare-eligible plaintiff coming through a personal and physical injury settlement. **Here is how ...**

Generally speaking, we have no rules, regulations, or law to guide us on the liability MSA side (yet). Fortunately, we do have guidance and procedure in this particular area concerning **AVOIDANCE**.

The September 30, 2011 Charlotte Benson (CMS Acting Director, Financial Services Group, Office of Financial Management) memorandum offers the following (*see attached official Memorandum*):

“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.”

In reality, obtaining a “certifying” letter has proven to be difficult. Many treating physicians have not been willing to certify in writing that treatment has been completed and that future medical items and/or services will not be required. If the letter is attainable, then “mission accomplished,” an LMSA has been avoided.

For those wanting to pursue this goal, **see the attached sample letter which may be freely copied or used in any manner that you wish.** If your client’s treating physician will sign this letter, have your client save this in their file in case Medicare ever denies future coverage for a new treatment for the same issue or body part that is the subject of their current settlement. **This letter should serve to confirm client's position that this is a new treatment and should be paid as a Medicare-allowable expense.**

If the treating physician **will not provide** the letter, **then the second way to avoid an LMSA is to submit the case to us using our [referral form](#).** Place a note in the form describing that your client meets the Benson condition, but the treating doctor won’t “certify in writing.” Include your client's medical and billing records for the last 2 years. One of our nurses will do a preliminary review of the file, *and if they instantly agree*, will issue a **“No MSA Necessary”** letter, **at NO CHARGE to you or your client.**

If neither of the first two ways works for your case, your client may still be a candidate for the **third way**—**obtaining a case-specific LEGAL OPINION that explicitly declares, “No MSA Necessary.”**

To pursue this third-way solution, contact PMLS at 888-MSA-PLTF (888-672-7583) for our top attorney recommendation.

YOUR MEDICARE PROBLEM SOLVERS

SAMPLE LETTER TO TREATING PHYSICIAN

Insert Date

VIA FACSMILIE TO: (Insert Dr.'s fax number if sending by fax)

Insert Dr.'s Name

Insert Dr.'s practice name

Insert Dr.'s street address

Insert Dr.'s city, state and zip

RE: Request for Letter

Dear Insert Dr.'s name,

I am requesting a letter from you regarding my current level of treatment. The letter should be composed similarly as follows:

Address it "To Whom It May Concern" stating that I have been your patient since [Dr. to insert date] and that you have treated me for my [Dr. to insert injury type] up until [Dr. to insert end of treatment date] and that to a reasonable medical certainty, treatment for this injury has been completed and that future medical items or services for this injury will not be required.

Please mail the letter to my address of:

Insert your full name

Insert your street address

Insert your city, state and zip

If you have any questions regarding this letter, please contact me at [insert your phone number].

Respectfully,

Sign in the space above and insert your name here



MEMORANDUM

DATE: September 30, 2011

FROM: Acting Director
Financial Services Group
Office of Financial Management

SUBJECT: Medicare Secondary Payer—Liability Insurance (Including Self-Insurance)
Settlements, Judgments, Awards, or Other Payments and Future Medicals --
INFORMATION

TO: Consortium Administrator for Financial Management and Fee-for-Service
Operations

The 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”).

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.”

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.

The above referenced guidance and procedure is effective upon publication of this memorandum.

/s/

Charlotte Benson