



March 22, 2017

Seema Verma, MPH  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Verma,

As the new Administration begins, we write to share our concern about potential plans for new guidance on liability Medicare Set-Aside Arrangements (MSA). The Future Care Coalition is an alliance of disability, patient, consumer and provider organizations committed to protecting the health and financial security of current and future Medicare beneficiaries who have incurred an injury, disability or chronic condition as the result of an accident, injury or illness.

As you may know, on June 8, 2016, CMS announced that it “is considering expanding its liability Medicare Set-Aside Arrangements (MSA) amount review process to include the review of proposed liability insurance (including self-insurance) and no-fault insurance MSA amounts.” It also said that, “CMS plans to work closely with the stakeholder community to identify how best to implement this potential expansion.” On February 3, 2017, CMS provided new instructions to their contractor that processes Medicare Secondary Payer reimbursements. Beginning October 1, 2017, the Medicare Administrative Contractor will begin to track the existence of any liability Medicare set-aside related to a claim and deny payment for items or services that they deem should be paid from a liability Medicare set-aside.

We are concerned that under a liability MSA proposal, current Medicare beneficiaries and non-beneficiaries alike, could be required to project what their future medical needs may be related to the accident, injury or illness in question and then place settlement funds in trust to cover all the costs of future medical treatment before the beneficiary can access any additional settlement funds. CMS has never before asserted the authority to be reimbursed for future medical care related to an accident, injury or illness that resulted in a settlement unless monies for that care have been specifically and fully paid to the beneficiary as a result of a trial or in a detailed settlement. MSP scenarios involve people who have sustained a spinal cord injury or a brain injury for example. At the time of an injury, chronic illness, or disability it is irresponsible to place the burden on families and the injured individual to set aside funds from a settlement to fulfill future care. These beneficiaries should not face further distress through challenges receiving care, or by having Medicare claims denied.

Unfortunately, this is not the first-time CMS has broached this issue. In 2012, CMS outlined potential Medicare policy in an [Advanced Notice of Proposed Rulemaking \(ANPRM\) on Medicare Secondary Payer and Future Medicals](#). The Medicare Futures NPRM was transferred to OMB for review but later withdrawn. With the start of the Trump Administration, we ask that CMS consider not moving forward with the development of liability MSAs. Prior to making any decisions, we ask that CMS provide opportunity for the stakeholder community to weigh in on the process.

Thank you for your consideration. We would be happy to meet with you to further discuss our concerns at your convenience. Please contact FCC coalition manager, Abby Bownas with any questions ([abownas@nvgl.com](mailto:abownas@nvgl.com) / 202 540 1070).

Sincerely,

Brain Injury Association of America  
Center for Justice & Democracy  
Consumer Voice  
Medicare Rights Center  
National Consumers League  
Paralyzed Veterans of America  
The Epilepsy Foundation  
The Jewish Federation of North America  
United Spinal Association

*Cc:*

*Jennifer Main, Director and Chief Financial Officer, Office of Financial Management*

*Sherri McQueen, Director, Financial Services Group*