

**DATE:** May 7, 2004

**TO:** All Regional Administrators

**FROM:** Director  
Center for Medicare Management

**SUBJECT:** Medicare Secondary Payer – Workers’ Compensation (WC) –  
INFORMATION

The purpose of this All Regional Administrators memorandum is to replace the policy that was outlined in the answer to the questions in the All Associates Regional Administrators (ARA) memorandum concerning Workers’ Compensation Commutation of Future Benefits (issued on July 23, 2001, attached) and in the answer to question seven from the April 21, 2003 Frequently Asked Questions (FAQ) (attached). The CMS replaces the policies regarding administrative fee and costs specifically associated with establishing Medicare set-aside arrangement in question eleven of the July 23, 2001 ARA memorandum and question seven of the April 21, 2003 FAQ’s with the following policy:

Administrative fees/expenses for administration of the Medicare set-aside arrangement and/or attorney costs specifically associated with establishing the Medicare set-aside arrangement cannot be charged to the set-aside arrangement. The CMS will no longer be evaluating the reasonableness of any of these costs because the payment of these must come from some other payment source that is completely separate from the Medicare set-aside arrangement funds.

For example, if the settling parties submit a Medicare set-aside proposal to CMS that claims that the injured individual will need \$50,000 worth of work-related medical expenses that would otherwise be reimbursable under Medicare and the settling parties claim that it will cost \$10,000 in administrative and attorney fees in order to administer and establish the Medicare set-aside arrangement proposal of \$50,000, then CMS will only evaluate/judge the reasonable of the \$50,000 figure.

The CMS will not evaluate whether or not the \$10,000 in administrative and attorney fees are reasonable nor will CMS permit the settling parties to add that \$10,000 amount to the \$50,000 Medicare set-aside arrangement amount. Therefore, if CMS approves that proposal for a \$52,000 Medicare set-aside arrangement, the settling parties \$10,000 in administrative and attorney fees cannot be charged to/against the Medicare set-aside arrangement of \$50,000 because CMS considers those costs to be separate issue for the settling parties to negotiate.

NOTE: This will be implemented on a prospective basis.

If you have any questions or concerns contact Fred Grabau at (410) 786-0206.

Herb Kuhn