

# Trovillion, Inveiss & Demakis

Trovillion, Inveiss & Demakis, APC has grown in reputation as one of Southern California's premier law firms specializing in representation of employers, insurance carriers and third party administrators in workers' compensation litigation.

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## **CMS RE-REVIEW PROCEDURES OF MSA**

On July 10, 2017, the Centers for Medicare & Medicaid Services ("CMS") released the Workers' Compensation Medicare Set-Aside Arrangement Reference Guide to assist in understanding the procedures for using CMS to approve Workers' Compensation Medicare Set-Aside Arrangements ("MSA"). While CMS does not have a formal appeals process for people who disagree with CMS's assessment of the MSA, the reference guide included three procedures for a re-review that may be helpful to practitioners.

### Mathematical Error

CMS will re-review the MSA if it contains an obvious mistake, such as a mathematical error or a failure to recognize medical records already submitted showing treatment that has already occurred, such as a surgery. It is important to note that the medical records must have already been submitted.

The next two avenues provide relief for instances in which the records were not previously submitted.

### Missing Documentation

CMS will re-review the MSA if the submitter/claimant has additional evidence not considered by CMS that is dated prior to the submission date and justifies a change in CMS's determination.

If we break this down into its component parts, the missing documentation re-review requires (1) additional evidence;

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(2) not considered by CMS ; (3) dated prior to the submissions date; that (4) justifies a change in CMS's determination. If subsequent evidence comes in, CMS allows for a one time re-review as indicated below.

#### Amended Review

CMS allows for a one-time re-review that includes submitting a new cover letter, all medical documentation related to the settled body parts since the previous submission, six months of the most recent pharmacy records, a signed consent to release information, and a summary of expected future care. This amended review is subject to:

- (1) CMS issuing a conditional approval amount at least 12 months but no more than 48 months prior to the re-submission,
- (2) The case not settling as of the date of the re-review request, and
- (3) The projected MSA resulting in a change of \$10,000.00 or 10%, whichever is more. This 10% or \$10,000.00 change is justified by returning CMS's recommendation sheet and identifying:
  - Items that were approved and already provided,
  - Items that are no longer necessary, and
  - Additional care that is required but was not included in CMS's conditional approval amount.

If your CMS conditional approval was more than 48 months prior to the re-submission, it is possible that CMS will continue to extend the period to include older approvals, on a case by case basis.

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