

*Best Practices for Settling a Claim That  
May be Submitted for CMS Approval*

1. Make sure settlement meets the CMS workload review threshold.
2. Specifically outline in the settlement agreement how the parties will deal with conditional payments.
3. Specify a dollar amount you will agree to pay to reimburse conditional payments (unless you are willing to pay the entire amount)
4. Decide if the medical portion of the settlement will be voidable if CMS issues a counter-higher approval. In the alternative, decide whether to prepare two settlement agreements – one for indemnity only that can be submitted independently, and a second agreement that can be submitted upon CMS approval.
5. Specify what happens if CMS approves an amount lower than submitted. Is the lower amount funded and does the claimant keep the difference?
6. Decide whether an annuity is more cost effective when dealing with large MSAs.
7. When an annuity is to be used, specify the terms of the annuity, including the seed money, the monthly or annual payout out, the cost of the annuity, and any reversionary interests.
8. Specifically state which party keeps the unused seed money and any annuitized funds from the MSA account when claimant passes away, before and after settlement approval.
9. When an MSA will be self-administered, specify in your settlement agreement the rules that claimant must follow to correctly administer the MSA and provide a self-attestation form with the settlement documents.

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*Best Practices When Settlement Does  
Not Meet Workload Review Thresholds*

1. Make sure the settlement does not meet the CMS workload review threshold.
2. If already a Medicare beneficiary, specifically outline in the settlement agreement how the parties will deal with conditional payments. **Note:** Conditional payment liens must be included in the total settlement amount when determining if CMS workload review thresholds have been met.
3. Specify a dollar amount you will agree to pay to reimburse conditional payments (unless you are willing to pay the entire amount).
4. Decide how you want to handle future medical treatment.
5. If possible, allocate some amount for future Medicare-covered expenses. Otherwise, if ever reviewed by CMS, the entire settlement amount may be deemed allocated towards future medical costs.
6. The least risk tolerant course of action would be having an MSA prepared in all cases, even if submission is not possible. However, know that this can, in many cases, prohibit settlement because of the projected amount required for the MSA. Also consider whether such an MSA could later be discoverable by CMS if an MSA in the recommended amount is not ultimately funded. We do not recommend an MSA in all cases.
7. If an MSA is not the best route, negotiate an agreeable set-aside allocation amount with the opposing party. Include clear settlement language stating how the parties arrived at this figure.
8. If the facts support a \$0.00 allocation, consider an opinion letter upon which the parties may rely.
9. Informal allocations are generally self-administered, so specify in your settlement agreement the rules that claimant must follow to correctly administer the MSA account and provide a self-attestation form with the settlement documents.

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