



Senator Richard J. Durbin
230 S. Dearborn Street, Suite 3892
Chicago, Illinois 60604

April 5, 2018

Dear Senator Durbin,

There is a Federal program buried deep within The Centers for Medicare and Medicaid Services (“CMS”) which institutionalizes chronic opioid use and abuse. While the Administration, House, Senate and every state in the nation work mightily to try to solve the opioid crisis in the United States, this little known program encourages, intensifies and effectively orders long-term opioid use and abuse by Medicare beneficiaries. While CMS continues to address the opioid epidemic in other areas of the Medicare program, it has consistently discounted, disregarded and denied this persistent problem within its own Medicare Set-Aside (“MSA”) policy. We write to bring your attention to this problem, and ask for your help in solving it.

Given Medicare’s status as a secondary payer in every injury settlement, parties will often allocate monies in a settlement for future injury-related treatment. In 2001, CMS’ Office of Financial Management, Division of MSP Program Operations formulated a program to review these allocations, called “Medicare Set-Asides” or “MSAs.” The stated goal of CMS’ MSA program is to estimate the total cost that will be incurred for all medical expenses otherwise reimbursable by Medicare for injury-related conditions during the course of the claimant’s life, and to set aside sufficient funds from settlements, judgments, or awards to cover that cost. When the parties to a settlement participate in CMS’ MSA review process, CMS requires the parties *“comply with CMS’ established policies and procedures in order to obtain approval”*ⁱ (emphasis added).

CMS publishes a Workers’ Compensation Medicare Set Aside Arrangement Reference Guide to explain its methodology in reviewing and approving these MSAs. Relative to opioids, CMS allocates these dangerous and addictive drugs over the full life expectancy of the beneficiary at the same dosage and frequency as have been prescribed in the six to twelve months prior to MSA submission. This is true despite these medications having been proven deadly when taken over time. In fact, CMS’ own Reference Guide states: *“it is very rare that (CMS) would reduce a prescription set-aside allotment due to a drug warning and precaution as defined by the FDA.”*ⁱⁱ CMS’ projection methodology is contrary to CDC Guidelines and evidence-based studies on the efficacy and danger of these drugs. We estimate that 70% of all CMS-approved MSAs which include prescription medication include life-long allocations for opioids. The effect of CMS’ current policy causes incalculable and unimpeded dependency, addiction and death.

As members of the National Alliance of Medicare Set-Aside Professionals (NAMSAP), we have been working for five years to appeal to CMS to change this policy. We provided two proposals to the Division of MSP Program Operations over the last two years. Most recently, we were joined by the National Council of Self-Insurers in this cause. Together, we recommended CMS change its policies in several ways, some of which were: to limit opioid allocations for acute pain to three days; to limit post-operative opioids in an MSA which includes a future



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surgical projection to five days; and, in the case of chronic use, include a 10% per week mandatory tapering and weaning schedule, as recommended by the CDC, until fully weaned from opioids. Our efforts have led to no action from CMS. In light of this, we turn to you for assistance.

NAMSAP is reaching out to each member of Congress to educate you on the existence of this program and to ask for your help in bringing an end to CMS' dangerous policy before further damage is done to our aged and disabled citizenry. We enclose information on what an MSA is, along with actual examples of letters where CMS institutionalized long-term opioid use.

We need your help to immediately address this dangerous, Federally-sponsored opioid policy. Please help us convince CMS that it is time to change its policy and put the health and welfare of its beneficiaries, of your constituents, first. NAMSAP stands ready to answer any questions you or your staff have regarding the MSA, how it works and how you can help. We thank you in advance for your assistance.

Sincerely,

Gary Patureau, CWCP, CMSP-F
Co-Chair, Evidence-Based Medicine Committee

Amy E. Bilton, JD, MSCC, CMSP-F
Co-Chair, Evidence-Based Medicine Committee

cc: Jessica McNiece / Jessica_mcniece@durbin.senate.gov
Max Kanner / Max_kanner@durbin.senate.gov

Resources found at <http://www.namsap.org/?page=CongressionalLetter>

1. What is Medicare Secondary Payer and What is a Medicare Set-Aside?
2. CMS Reference Guide
3. CMS Submission Quality Improvement Data Analytics
4. CWCI Report: Opioids in Workers' Compensation Medicare Set-Asides
5. EBM Committee correspondence with CMS

About NAMSAP

The National Alliance of Medicare Set Aside Professionals (NAMSAP) is the only non-profit association exclusively addressing the issues and challenges of Medicare Secondary Payer (MSP) compliance and its impact on workers' compensation and liability settlements. Contact NAMSAP at 225.454.6164, info@namsap.org or via www.namsap.org.

ⁱ Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide, COBR-Q1-2018-v2.7, p. 1, March 19, 2018.
https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/Downloads/WCMSA-Reference-Guide-Version-2_7.pdf

ⁱⁱ WCMSA Reference Guide at 30.