

- For claims involving ingestion (for example, a recalled drug), it is the date of first ingestion.
- For claims involving implants, it is the date of the implant (or date of the first implant if there are multiple implants).

**Notes:**

- CMS' definition of the DOI generally differs from the definition routinely used by the insurance/WC industry only for claims involving exposure, ingestion, or implants.
- If multiple WC settlements are included in one WCMSA submission, make sure the cover letter addresses how to handle the settlements (one WCMSA, or each settlement in a separate WCMSA).

**D. Contact Information:**

1. Submitter – Name, address, phone & fax of person/entity submitting the WCMSA.
2. MSA Administrator – Identify the person/entity responsible for control and documentation of proper expenditures from the WCMSA. Identify if the administrator is the claimant or a professional administrator.
  - If the administrator is the claimant, and they have an SSA Representative Payee (i.e., an individual or organization appointed by the SSA to receive Social Security and/or Supplemental Security Income (SSI) benefits for someone who cannot manage or direct someone else to manage his or her money), provide the name, address, phone, and fax for the SSA Representative Payee.
  - If the administrator is a professional administrator, provide their name, address, phone, and fax.
3. Claimant's Attorney – Provide the name address, telephone number, and fax number for the claimant's counsel.
4. Employer – Provide the name address, telephone number, and fax number for the claimant's employer.
5. Employer's Attorney – Provide the name, address, telephone number, and fax number for the employer's attorney if they have prepared documentation for the proposed WCMSA.
6. WC Carrier – Provide the name, address, telephone number, and fax number for the employer's insurance company.
7. WC Carrier's Attorney – Provide the name address, telephone number, and fax number of the carrier's attorney if they have prepared documentation for the proposed WCMSA.

**E. Settlement Details**

1. Total settlement amount – Submit the gross total settlement amount as a single lifetime number and NOT the settlement amount minus attorney fees, expenses, etc.
  - The computation of the total settlement amount includes, but is not limited to, an allocation for future prescription medications of the type normally covered by

Medicare, in addition to allocations for other Medicare covered and non-covered medical expenses, indemnity (lost wages), attorney fees, set-aside amount, non-Medicare medical costs, payout totals for all annuities rather than cost or present values, settlement advances, lien payments (including repayment of Medicare conditional payments), amounts forgiven by the carrier, prior settlements of the same claim, and liability settlement amounts on the same WC injury (unless apportioned by a court on the merits).

- The total settlement amount excludes prior contested awards by a court on the merits, as well as past payments of indemnity or medical expenses that were not part of settlements, and liens and other amounts that the claimant will pay from the settlement funds. CMS does **not** consider medical malpractice settlements based on alleged mishandling of the WC injury to be part of the WC settlement.
- Use exact amounts, not “under” or “over” a given dollar amount.
- For any cases involving a second injury fund or a “reopener” (common in New Jersey and Oklahoma):
  - Include any prior settlement amounts in the total settlement amount, as well as any second injury fund settlement (in New Jersey) or “3e” settlement (in Oklahoma) being made at the same time the main injury is settling.
  - Do not include in the total settlement amount any estimated amounts for settlements contemplated for the future but not being made at the time of the main injury settlement.
- Where there are no drugs prescribed for the work-related injury or if prescription drugs are excludable under Medicare Part D, the cover letter should contain an explanation.
- If annuities are involved, use the lifetime payout amount in the total instead of annuity purchase price and include the annuity rate sheet to support your calculation. In order to determine the total settlement amount when using an annuity, please be advised that Medicare determines the value of the annuity based on how much the annuity is expected to pay over the life of the settlement, not on the present-day value (PDV) or cost of funding that annuity. The WCMSA does not need to be indexed for inflation.

**Example:** A settlement is to pay \$15,000 per year for the next 20 years to an individual who has a ‘reasonable expectation’ of Medicare enrollment within 30 months. This settlement is to be funded with an annuity that will cost \$175,000. CMS will review this settlement because the total settlement to be paid is greater than \$250,000 (\$15,000 per year x 20 years = \$300,000). It is immaterial for Medicare’s purposes that the PDV or cost (\$175,000) to fund this settlement is less than \$250,000. The total lifetime payout is \$300,000.

2. Total proposed Medicare set-aside amount – Provide the amount of the medical benefits that you propose to be placed in the WCMSA for future items/services that would otherwise be covered by Medicare (this is separate from wage/indemnity benefits). If the settlement does not specify a total amount for future medical treatment, explain why it does not. Identify separately the appropriate future expenses that might otherwise be paid

by Medicare. Outline future non-Medicare covered expenses not included in the WCMSA, e.g., outpatient prescription medications.

**Note:** Where the WCMSA is to be funded by a structured settlement, the cover letter must disclose whether any portion of the projected prescription drug expenses has been included in the lump sum required to cover the first surgery/procedure for each body part, and/or replacement and the first two years of annual payments.

- Provide the portion of set-aside for medical items and services.
- Identify the calculation method used to determine the amount for future medical treatment: WC State fee schedule, or full actual charges.

**Note:** Include the method by which prescription drug costs were calculated, in addition to disclosure of the method used to calculate other future medical costs.

- Provide the portion of set-aside for prescription drugs. If the WCMSA cover letter fails to include a separate projected amount for future prescription drug costs, one of two results will follow:
  - If the available medical records indicate medications have been or are expected to be prescribed for WC-related injuries, CMS will calculate and price these medications at AWP based on brand-name prices.
  - If the claimant's current treatment records contain no indication that prescription drugs will be needed in the future, CMS will accept that Medicare's interests have been adequately protected with a \$0 projection for future prescription drug expenses. This assumes that the WCMSA provisions regarding other future WC related medical expenses are reasonable.
- Identify if the set-aside is paid out as a lump sum or an annuity. If the set-aside is paid out as an annuity, identify the following:
  - Name of the carrier
  - Cost of the annuity
  - Proposed initial deposit (seed money)
  - Minimum annual deposit for the balance of the claimant's life
  - Annuity starting date
  - Length of annuity
  - Annual payout of annuity
  - Annual funding date

See Section 9.4.4, Step 6, for instructions on what amounts to include in the seed money. The following example illustrates how to calculate the seed money:

**Example:**

Total WCMSA = \$301,826.90

Cost of first surgery for each body part, and/or the first procedure/replacement = \$10,191.40

Life expectancy of claimant = 28 years:

- Step 1. Identify the total estimated future medical services and prescription drugs covered by Medicare (\$301,826.90)
- Step 2. Identify the cost of the first surgery for each body part and the first procedure/replacement (\$10,191.40)
- Step 3. Subtract Step 2 from Step 1 (\$291,635.50)
- Step 4. Divide the result from Step 3 by the life expectancy (28) to get the annual medical costs ( $\$291,635.50 / 28 = \$10,415.55$ )
- Step 5. Multiply the result from Step 4 by 2 ( $\$10,415.55 \times 2 = \$20,831.10$ )
- Step 6. Calculate the seed money to be deposited upon settlement by adding the amount calculated in Step 2 to the amount calculated in Step 5 ( $\$10,191.40 + 20,831.10 = \$31,022.50$ )
- Step 7. Calculate the minimum annual deposit for the balance of the claimant's life by subtracting the seed money (Step 5) from the total WCMSA (Step 1) ( $\$301,826.90 - \$31,022.50 = \$270,804.40$ ) and dividing this by the life expectancy minus one ( $28 - 1 = 27$ ):  $\$270,804.40 / 27 = \$10,029.79$ .

The minimum annual deposit for the balance of this claimant's life is \$10,029.79.

This deposit must be made no later than one year from the date of settlement.

- Identify the state of jurisdiction/venue. Identify the state (including Washington, DC, American Samoa, Guam, Puerto Rico, and the US Virgin Islands) where the WC hearing will be held. Show state, District of Columbia, or U.S. protectorate.

**Tips for submission**

- Ensure that the proposed set-aside is a proposed lifetime (not annual) set-aside amount.
- Ensure that it clearly shows how much of the proposed set-aside is for medical services and how much is for prescription drugs.
- Ensure the medical services proposed amount plus the prescription drug proposed amount adds up to the total proposed amount.
- Verify that any pricing charts are consistent with the amounts listed in your cover letter.
- Ensure that the proposed amount is consistent with the court documents, or that any differences are explained.
- If annuities are involved, use lifetime payout amounts instead of annuity purchase prices, and include amount of proposed seed money/initial deposit and annual deposit.