



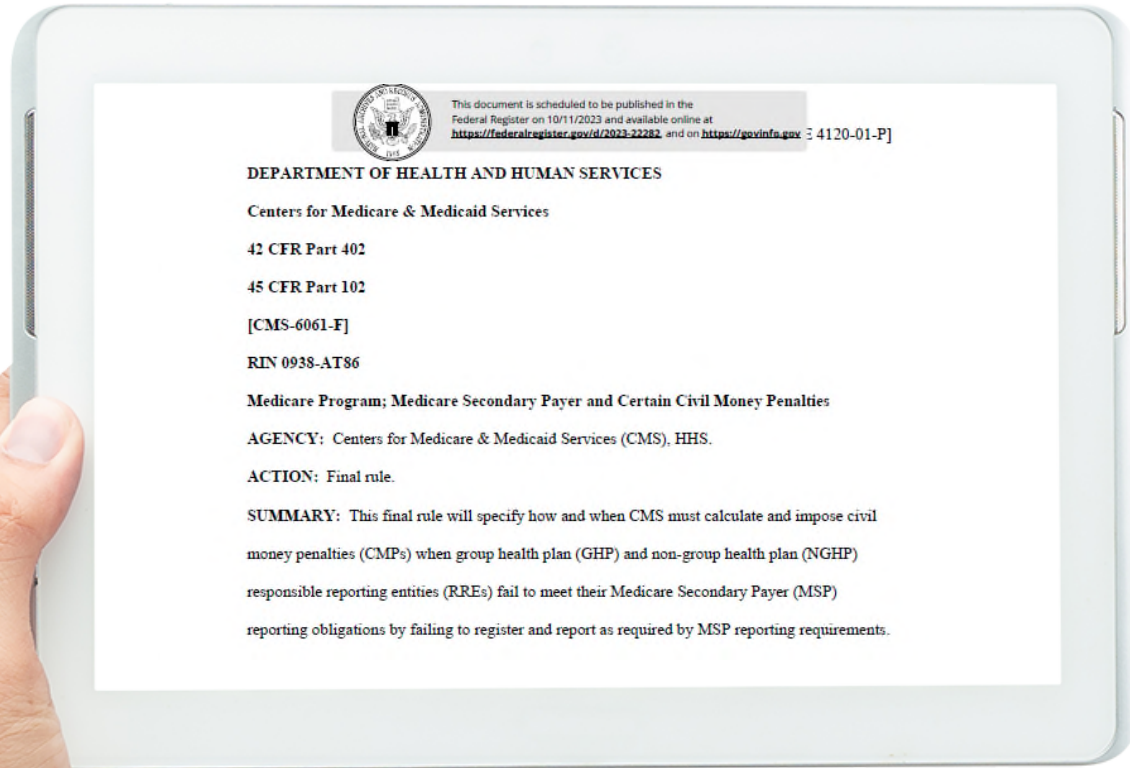
Rethinking Your Medicare Compliance Program

January 10, 2024

TOP MSP Risk and Exposure Considerations in 2025

1. Civil Money Penalties
2. WCMSA Reporting
3. MSA Exposure
4. Conditional Payment
Exposure

Civil Money Penalties (CMPs) – Final Rule



- Only for Untimely Reporting
- Audit Approach
- Timely Reporting of ORM and TPOC
- Appeals Process (Informal and Formal)
- Five-Year Statute of Limitations
- Safe Harbors
- Tiered Approach for NGHPs
- Prospective Only

Civil Money Penalties

**October
11, 2024**

Final Rule for CMPs became applicable-any reportable event occurring on or after this date could be subject to CMPs

**October
11, 2025**

CMP Enforcement Date-the earliest date penalties can be imposed for untimely reporting

**January
2026**

CMS will begin quarterly audits which include records from the fourth quarter of 202

Civil Money Penalties

Tier One	ORM or TPOC is reported greater than 1 year, but less than 2 years, after reporting required	\$250 per day for each day of noncompliance	\$357 per day for each day of noncompliance
Tier Two	ORM or TPOC is reported greater than 2 years, but less than 3 years, after reporting required	\$500 per day for each day of noncompliance	\$714 per day for each day of noncompliance
Tier Three	ORM or TPOC is reported greater than 3 years after reporting required	\$1,000 per day for each day of noncompliance	\$1,428 per day for each day of noncompliance

Section 111 Reporting Penalty Example

- A beneficiary is involved in a car accident on 2/5/2025 and reports the accident to their carrier on the same day.
- The case settles on 6/5/2025, but the RRE never reports TPOC. • The attorney self-reports the TPOC, on the beneficiary's behalf, on 7/5/2025.
- On 10/1/2026, the beneficiary's 7/5/2025 self-report record is randomly selected for CMS' audit, and a corresponding Section 111 record from the RRE cannot be found. The RRE is non-compliant with Section 111 reporting because it failed to submit a corresponding Section 111 record for the 7/5/2025 non-Section 111 record.
- The period of non-compliance is 6/6/2026 - 10/1/2026 (the date of CMS' audit).
- The potential CMP is calculated as: $\$250 \times 117$ (days of noncompliance) = \$29,250 (as adjusted for inflation)

Civil Money Penalties

- Confirm your Account Manager and Account Representative information is up to date, that they are aware of the potential for CMPs, and a process in place to ensure that Profile Reports and correspondence from CMS are getting to those responsible for reporting.
- Review your CMS Quarterly Response Files for errors
- If you are working with a reporting agent, make sure they are a true partner and not just transferring data to and from CMS for you. They should be working with you to mitigate all areas of potential exposure. If you are unsure that your agent is doing this for you, please contact us for help in this area.
- Consider an audit of your current program to identify issues and program gaps now so they can be fixed and help prevent untimely reporting and other cost exposure.
- Training, Training, Training –adjuster, defense counsel

MSAs Reported as Part of TPOC

Effective April 2025 CMS will expand Section 111 Mandatory Insurer Reporting to capture the WCMSA information as part of the TPOC reporting.

Reporting for Medicare beneficiaries only

Only WorkComp claims



WC Reporting Threshold Remains: \$750

**Applies to all TPOCs:
Includes both submitted and non-submit MSAs**

TPOC Definition

Section 111

Pursuant to MMSEA Section 111 Non-Group Health Plan (NGHP) User Guide 6.4:

- TPOC – Total Payment Obligation to Claimant “refers to the dollar amount of a settlement, judgment, award, or other payment in addition to, or apart from, ORM.”
- “A TPOC generally reflects a “one-time” or “lump sum” settlement, judgment, award, or other payment intended to resolve / partially resolve a claim.”
- “It is the dollar amount of the total payment obligation to, or on behalf of, the injured party in connection with the settlement, judgment, award, or other payment.”



What Is Being Collected?

CMS identified the following 7 fields to be added to the Claim Input File record layout:

Field Name	Description	Required
MSA Amount	Total MSA Amount	Yes, if WC and TPOC is reported
MSA Period	Period of coverage in years	Yes, if the MSA amount is greater than \$0
Lump/Annuity Indicator	Is the settlement setup as a lump sum or a structured annuity?	Yes, if the MSA amount is greater than \$0
Initial Deposit Amount	Initial amount deposited	Yes, if specified as a structured annuity
Anniversary (Annual) Deposit Amount	Amount deposited annually	Yes, if specified as a structured annuity
Case Control Number	ID from case that has been established with CMS	No
Professional Administrator EIN	Tax ID of the Professional Administrator if one exists	No

What to Consider to Avoid Exposure

- CMS can bring an action under False Claims Act if RRE fails to report this information
- Amount of MSA can be \$0 and above
- Consider below threshold MSAs
- Create a compliant Medicare Set-Aside program
- CMS is looking at whether the funds in the MSA will prematurely exhaust
- Consider administration for claimant
- Ask compliance partner to help with training and reports

TPOC – Reporting WCMSAs

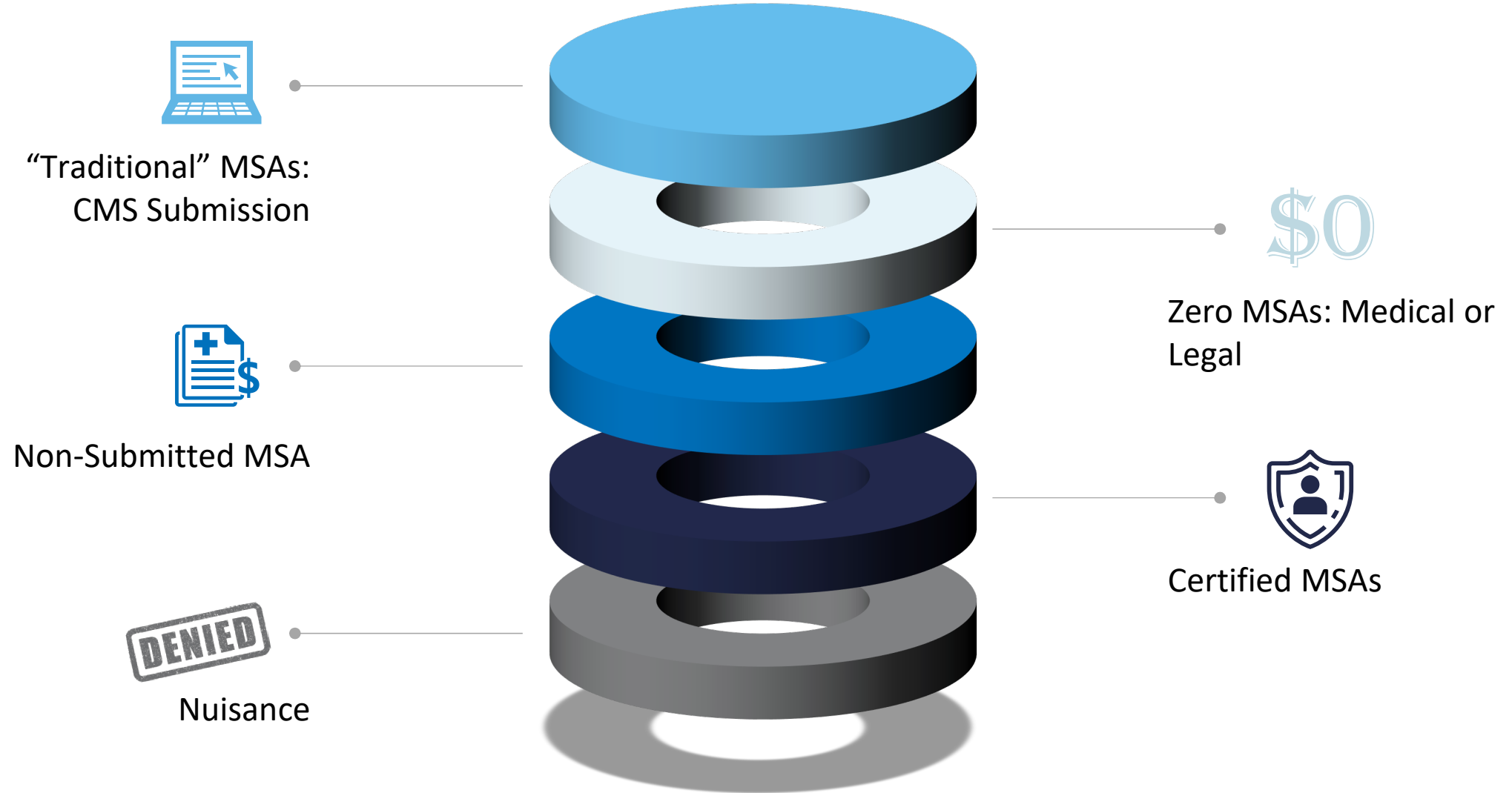
Table 1: WCMSA Proposed Values

Reporting Period	Total WCRC Recommendations Completed	Total Settlement Amount	Total Settlement Amount Average	Total Proposed WCMSA Amount	Total Proposed WCMSA Average
FY2024	14,862	\$2,266,568,700.00	\$152,487.15	\$1,052,008,152.28	\$70,775.58
FY2023	15,743	\$2,518,516,739.00	\$159,976.93	\$1,115,979,269.00	\$70,887.33
FY 2022	13,752	\$ 2,353,923,354.00	\$ 171,169.53	\$ 983,080,609.00	\$ 71,486.37
FY 2021	14,816	\$ 2,364,327,704.00	\$ 159,579.35	\$ 1,043,630,541.00	\$ 70,439.43
FY 2020	16,517	\$ 2,789,808,305.00	\$ 168,905.27	\$ 1,236,254,478.00	\$ 74,847.40

Table 2: WCRC Values

Reporting Period	Total WCRC Recommendations Completed	Total WCRC Recommended WCMSA Amount	Total WCRC Recommended WCMSA Average	% Proposed Vs Recommended Change	Recommended Medical Amount	Recommended Medical Amount Average	Recommended Rx Amount	Recommended Rx Amount Average
FY2024	14,862	\$1,277,225,306.49	\$85,927.43	21%	\$1,012,547,209.12	\$68,120.78	\$264,678,097.37	\$17,806.65
FY2023	15,743	\$1,361,024,440.84	\$86,452.67	22%	\$1,047,348,104.96	\$66,527.86	\$313,676,335.88	\$19,924.81
FY 2022	13,752	\$ 1,121,774,770.00	\$ 81,571.75	14%	\$ 836,056,957.09	\$ 60,795.30	\$ 285,717,812.91	\$ 20,776.46
FY 2021	14,816	\$ 1,196,257,790.00	\$ 80,740.94	15%	\$ 886,373,563.87	\$ 59,825.43	\$ 309,884,226.13	\$ 20,915.51
FY 2020	16,517	\$ 1,396,732,517.00	\$ 84,563.33	13%	\$ 957,804,564.25	\$ 57,989.02	\$ 438,927,952.75	\$ 26,574.31

Allocation Options



MSA Programs



Traditional

- MSAs created in line with CMS contractor guidelines (pricing/review)
- Submission to CMS
- Follows voluntary WCMSA Reference Guide recommendations



Below Threshold

- Does not meet CMS Review Threshold
- Evidence-based allocation considering Medicare's interest as part of settlement.



Non-Submit

- Opting out of voluntary CMS review process
- Strict application of jurisdictional statutory requirements
- Evidence-Based medicine approach based on future medical recommendations
- Pairs with settlement addendum language



Certified

- Opting out of voluntary CMS review process
- Evidence-Based medicine approach based on future medical recommendations
- Requires post-settlement services
- Provides certification to parties in the event CMS disputes MSA in the future

Mitigation Considerations



Example Opportunities for Mitigation

- Pharmacy Management
 - Brand v. generic
 - Form: Tizanidine 4mg, tabs (\$1.46) v. caps (\$3.43)
 - Quantity and dosage: Methocarbamol 1000mg (\$28.22) v. 500mg x 2 (\$0.08)
- Future Medical Care:
 - Physician visits: Inconsistent treatment patterns
 - Surgeries: Mentioned but unclear if recommendation continues to be viable

Consider Post-Settlement Administration

Professional Administration

- Professional administrator handles all aspects of MSA account administration
- Claimant does not receive/control MSA funds

Self-Administration with Support

- Guidance on MSA account administration
- Beneficiary pays providers directly
- Claimant controls/gets the money

Consider Structured Settlement Annuities

Annuity

Often used to provide a pension. An annuity is a fixed regular payment payed over a number of years to a person during their lifetime

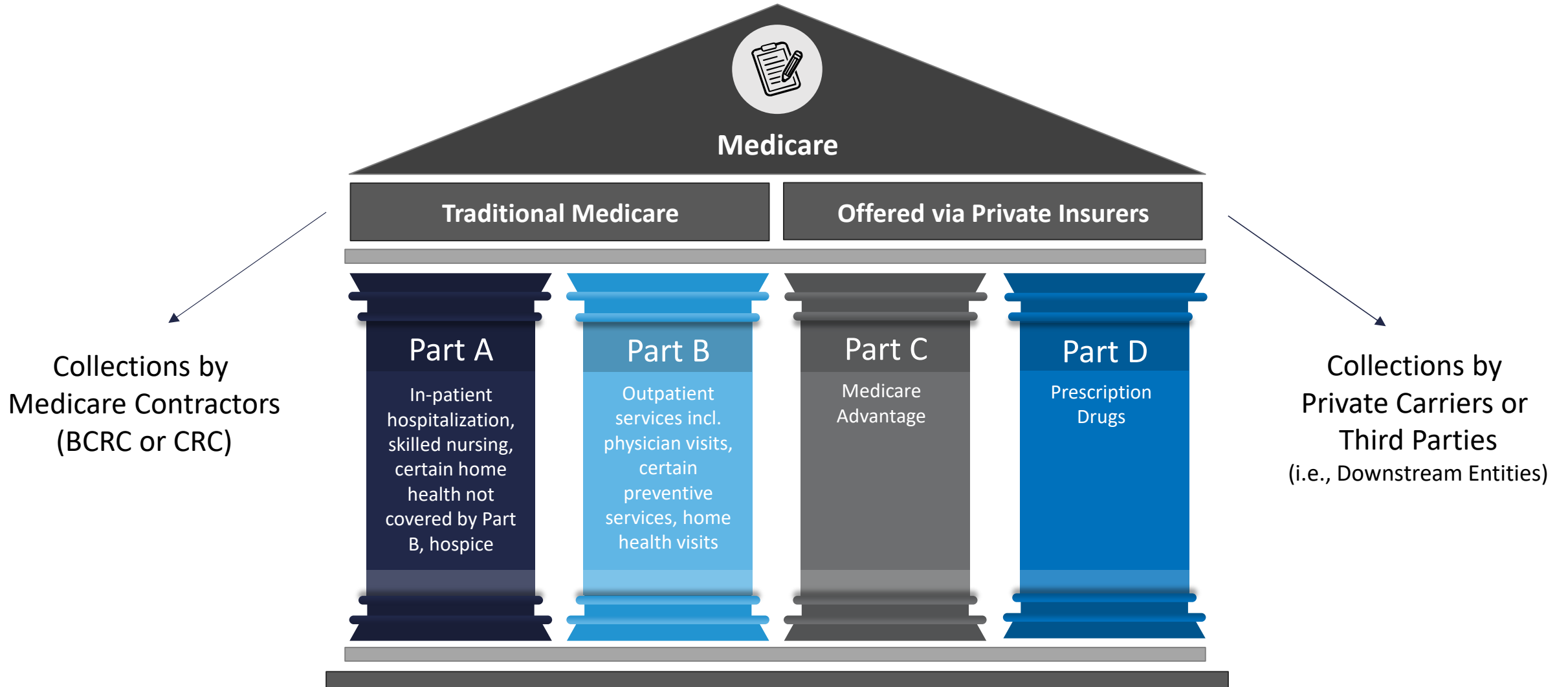
When can they be used?

- Medicare Set-Aside Funding
- Non-Medicare Expenses Funding (nursing home, transportation, translation etc.)
- Indemnity Funding

Why use them?

- Cost savings – may be the ‘bridge’ to get to settlement
- Deterrent from Claimant prematurely exhausting settlement funds

Medicare – Past Payments





Medicare C & D Info

Since December 2021, Medicare has provided Part C and D information to entities using the query input file or beneficiary lookup.



HEW Software

In order to take advantage of the new information being provided, an upgrade to the HEW software is required. Can also be obtained through Medicare's COBSW website with appropriate credentials.

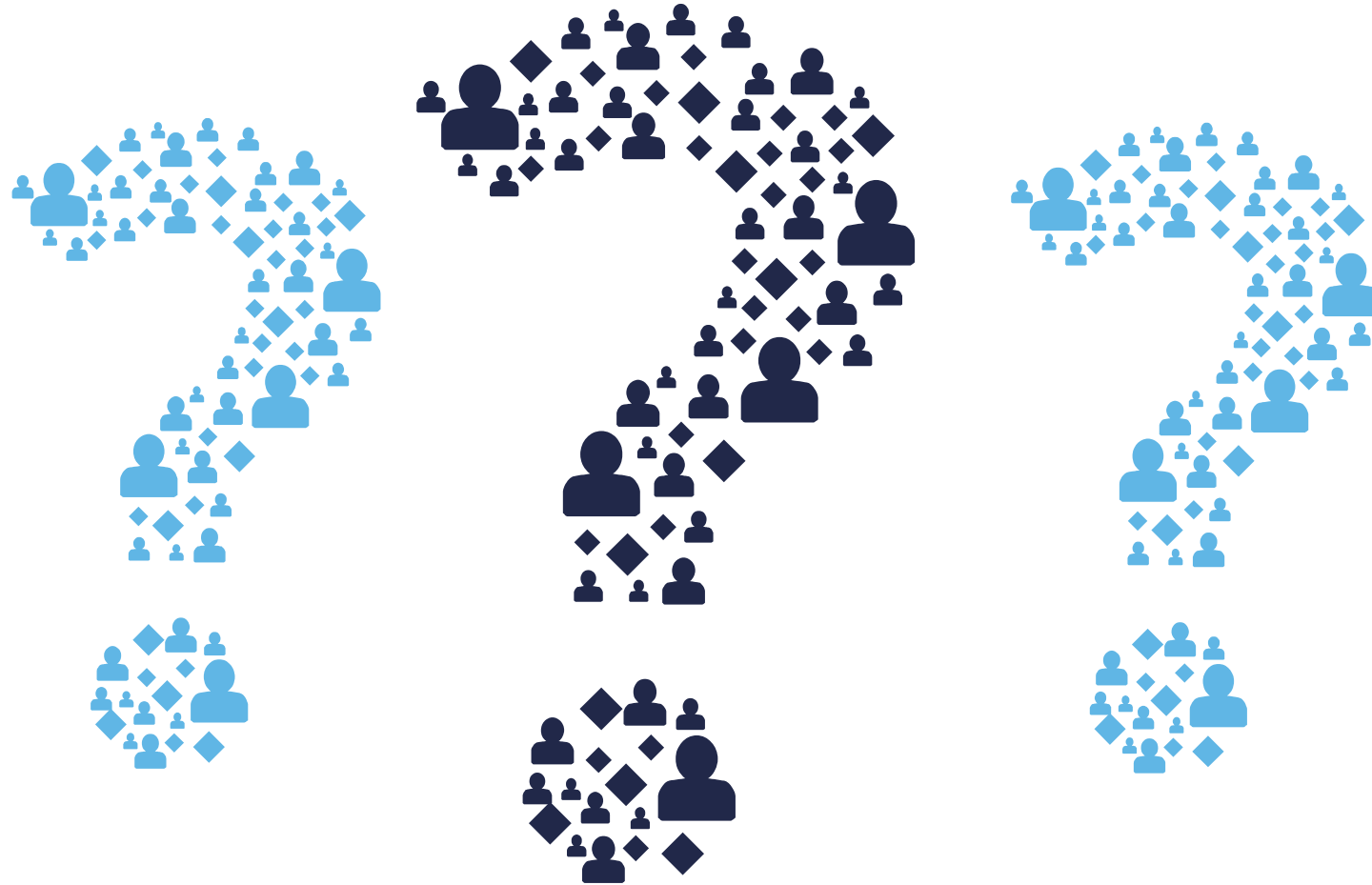


Last Three Years

Once upgraded, the query provides the claimant's last three years of Part C and/or D benefits.*

* Note:

- Query appears to be accurate information, with **nuances**
- Address of Part C or D plan may **not** be *best* address
- Query provides only last **three years**
 - Tracking
 - What if the claim is more than three years old?






Thank You for Your Time

Contact us with any questions

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