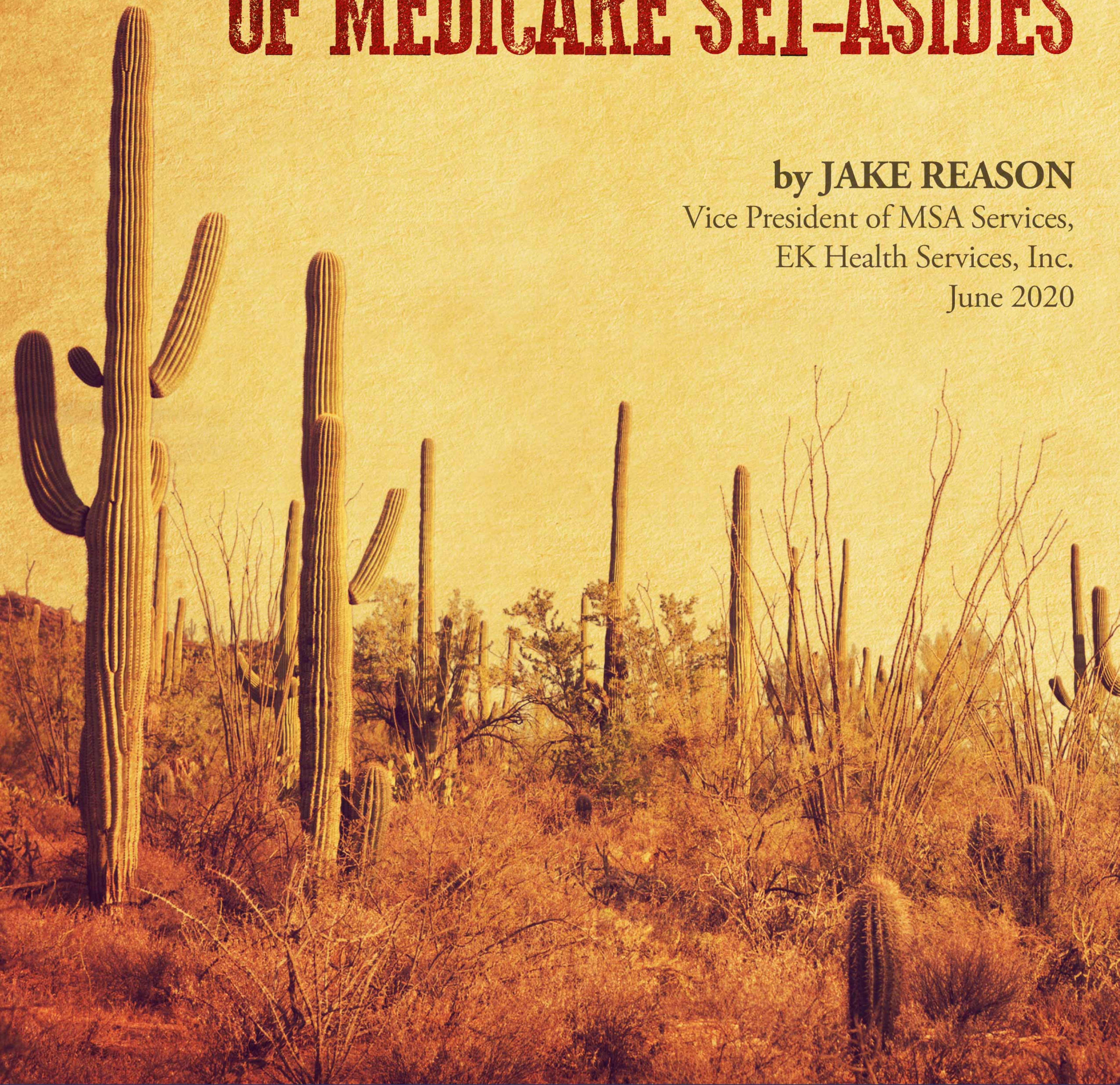


TAMING THE WILD, WILD, WEST OF MEDICARE SET-ASIDES

by **JAKE REASON**

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Taming the Wild, Wild West of Medicare Set-Asides

By Jake Reason | Vice President of MSA Services, EK Health Services, Inc.
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Since the inception of the Medicare program in 1965 and the Medicare Secondary Payer (MSP) Act being established in 1980, the world of Medicare Set-Asides (MSAs) has been like the Wild, Wild West. Why? The regulatory guidelines are relatively open to interpretation with a lack of enforceability.

History

The Medicare Secondary Payer (MSP) Statute was enacted in 1980 as part of the Social Security Act to ensure that Medicare does not pay for medical care in instances where a third party is responsible. Workers' compensation has been primary to Medicare since the inception of the Medicare program in 1965. The primary subsections specific to workers' compensation claims are:

- 42 U.S.C. 1395y(b)(2); Section 1862, which establishes that Medicare is always secondary to workers' compensation
- 42 U.S.C. 1395y(b)(2)(B)(ii); Section 1862, which establishes that Medicare is entitled to re-payment of conditional payments

MSA services were born from Medicare's "secondary" status, which gives the federal government a right of recovery against primary payers. Unfortunately, Medicare's right of recovery does not come with clear, objective guidelines and an enforceable rationale. This vacuum of "law and order" creates an overly complicated MSA process that is subject to continual change.

As a result, payers – including employers and insurance carriers – need a comprehensive suite of programs designed to fully comply with the requirements of the MSP Act. MSA solutions partners like EK Health Services, Inc., provide the highest quality evaluations and reports to expedite claim resolution and accurately forecast settlement costs. In doing so, we help payers avoid the pitfalls and financial burden of inflated settlement costs that accompany high set-aside allocations.

Strategic Impact

EK Health in particular has tamed the Wild, Wild West of MSAs by leveraging its clinical expertise. Our evidence-based MSA process focuses on Evidence-Based Medical guidelines to deliver highly defensible MSA results in as few as four days. Advanced analytics proactively identify and address problematic cost drivers. As a result, we produce the lowest defensible medical allocation, supported by strong, evidence-based documentation.

Non-Submission Programs

When MSAs are submitted to the Centers for Medicare and Medicaid Services (CMS), it can further complicate matters and require a high degree of expertise. In some instances, a Non-Submission Program is the best course of action for achieving strong MSA outcomes. How do you know if a Non-Submission Program is right for you? By evaluating risk on high exposure or severe claims, and in consideration of other key factors, EK will stand beside you to determine whether a Non-Submission program is right for your program.

MSA Proposals

Another key component of the Medicare Set-Aside process is an MSA Proposal, which is an allocation of future medical exposure based upon the guidelines and methods used by Medicare. It represents current exposure and provides adjusters with specific cost information concerning which elements (treatment/medication) are driving the claim. The MSA proposal essentially serves as the "starting point" for negotiating on the appropriate cost of future medical on a claim.



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(continued)

MSA Proposals (continued)

If you believe an MSA proposal is needed, ensure your cases are ready prior to requesting an MSA proposal. Here's how:

- If the MSA is six months or older or if a significant change in treatment/condition has occurred, have the MSA revised prior to settlement.
- The Claims and Pharmacy Payment Histories must be current and the rated age must not be expired.
- Know the claimant's current medication regimen (or lack thereof) and have documentation of the same.
- Have the current physician(s) clearly document the anticipated future treatment and prescription drug needs.
- If there is potential for medication tapering, have the physician(s) document and institute tapering prior to submitting the MSA, if possible.
- Have the physician(s) clarify or retract any previous recommendations for surgeries, joint replacements, spinal cord stimulators, pumps, etc. if they are no longer required.
- Determine whether you have made payments for anything unrelated to the workers' compensation claim and whether these payments may have been made in error.

CONCLUSION

MSAs are by nature a risky and ever-changing landscape – much like the Wild West – and it is critically important to engage expert resources to secure safe passage through to the optimal outcomes you need. To learn more about EK Health's MSA solutions and to see how your workers' compensation program can benefit, visit ekhealth.com or email the author at jreason@ekhealth.com.

ABOUT THE AUTHOR

Jake Reason has invested 16 years in the workers' compensation industry with a primary focus on Medicare Set-Asides and Medical Cost Projections. That experience has yielded a keen understanding of the settlement process for workers' compensation claims and the potential pitfalls which, if not adequately managed, can derail settlements. Skilled at determining customer needs and devising personalized solutions, our MSA team has successfully designed technical/workflow guidelines for high-volume Medicare Set-Aside operations.

ABOUT EK HEALTH

As a leading national managed care company specializing in workers' compensation, EK Health Services, Inc. sets the gold standard for medical case management, utilization review, medical bill review, network management, and Medicare Set-Asides. We provide the best people, processes and technology to facilitate expedient, quality and cost-efficient medical treatment for workers' compensation claims. Learn more about EK Health's solutions at www.ekhealth.com.