



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services  
Center for Beneficiary Choices  
Medicare Advantage Group

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7500 Security Boulevard  
Baltimore, Maryland 21244

DATE: March 1, 2007

TO: Medicare Advantage (MA) Organizations Offering Medical Savings Account (MSA) Plans in 2008

FROM: David A. Lewis  
Director, Medicare Advantage Group

SUBJECT: Guidance on Contract Requirements between MA MSA Organizations and MSA Banking Partners (i.e. MSA Trustees)

This memorandum outlines CMS' expectations on the contents of the MSA banking contract between an MA MSA organization and the entity the MSA organization may contract with to perform the MSA Trustee function.

All contracts and/or agreements that delegate any of an MA MSA organization's responsibilities under its contract with CMS to a third party are required to meet certain contract requirements as set out under 42 CFR §422.118 and §422.504. These requirements are outlined as part of the MA MSA organization application and identified in the attached document (matrixadm.doc).

In addition to the requirements stipulated above, the contract between an MA MSA organization and its designated MSA Trustee must adhere to the following requirements in accordance with 42 CFR Part 422:

- Both parties agree that they acknowledge that the MSA accounts to be provided under this contract meet the requirements at §422.4 (a)(2)(ii) describing an MA MSA as “a trust or custodial account that is (A) established in conjunction with an MSA plan for the purpose of paying the qualified expenses of the account holder; and (B) into which no deposits are made other than contributions by CMS under the MA program, or a trustee-to-trustee transfer or rollover from another MA MSA of the same account holder, in accordance with the requirements of sections 138 and 220 of the Internal Revenue Code.”
- Acknowledge that the MSA Trustee must do the following to qualify as an MSA Trustee:
  - Register with CMS or its designee (i.e. the MA organization)
  - Certify, or attest, that it is a licensed bank, insurance company, or other entity qualified, under sections 408(a)(2) or 408(h) of the Internal Revenue Code of 1986, to act as a trustee of individual retirement accounts
  - Agree to comply with the MA MSA provisions of section 138 of the Internal Revenue Code of 1986; and

- Provide any other information that CMS may require.

An MSA banking contract between an MA MSA organization and its designated MSA Trustee should also include the following information:

- A comprehensive list of all services the MSA Trustee will provide to MSA account holders (i.e., debit cards, online account access, checks, etc.)
- Agreement to timely processing of MSA applications once received from applicants
- Agreement to timely notification to the MSA organization on confirmed and rejected account applications
- Acknowledgement that any funds received for the purpose of funding member accounts are, in whole or in part, Federal (CMS) funds and thus the MSA Trustee is subject to any laws that are applicable to individuals and entities receiving Federal funds
- Agreement to provide timely documentation of the actual amount deposited into MSA member accounts
- Agreement to provide timely transfer of the MSA deposit into MSA member accounts upon receipt from CMS (or the MSA organization as CMS' designee)
- Specify when an MSA member will have access to the funds in the account after the funds have been deposited
- Agreement to timely transfer of funds from an MSA account established by the MSA Trustee to another MSA account established at another MSA Trustee per member direction
- Agreement to timely notification to the MSA organization if an MSA member closes or moves its MSA account
- Provide all MSA member materials regarding MSA accounts to the MSA organization and agree to make changes as deemed necessary by the MSA organization or CMS
- Provide timely advance notice to the MSA organization regarding any changes in fees charged to MSA account holders
- Acknowledgement that any information about the MSA account that can be accessed online must also be available to the MSA member via telephone
- Acknowledgement that the MSA organization is subject to CMS' reporting requirements and the MSA Trustee will comply with all data and reporting requests in order for the MSA organization to meet these requirements
- Agreement that the MSA Trustee has developed and implemented systems, policies, and procedures sufficient to protect individual beneficiary information from unauthorized disclosure

If you have any questions on these requirements, contact Yolanda Robinson at 410-786-7627.