

MEDICARE SET-ASIDES

For many claimants, negotiating the payment of future medical bills is an essential component of a favorable settlement. Claimants who currently receive Medicare or who expect to receive Medicare in the near future must follow specific guidelines when it comes to their future medical payments.

Medicare Secondary Payer provisions specify that Medicare will not pay for medical services related to a lawsuit when the proceeds include funds for future medical expenses until all such funds are properly expended. In other words, Medicare becomes the secondary payer to the settlement or award.

Medicare Set-Asides

A Medicare Set-Aside (MSA) is the government's preferred method for protecting Medicare's interests. A portion of the settlement is placed into an account to cover future medical costs related to the claimant's injury. Once the account is depleted, the claimant can begin receiving Medicare payments again.

To create a proposal with a recommended allocation amount, the claimant's estimated total cost of future medical care will be reviewed, as will the claimant's medical history, including any pre-existing conditions, current treatments, physician statements, life expectancy, and other factors.

Criteria for Reviewing a Proposed Medicare Set-Aside

An expert can help determine the appropriate amount to "set aside" so that the MSA is not over- or under-funded. To date, the Centers for Medicare and Medicaid Services (CMS) have only released guidelines for reviewing Workers' Compensation Medicare Set-Asides (WCMSAs). CMS will only review WCMSA proposals that meet the following criteria:

- The claimant is a Medicare beneficiary, and the total settlement amount is greater than \$25,000; or
- The claimant is not a Medicare beneficiary at the time of settlement but has a reasonable expectation of Medicare enrollment within 30 months of the settlement date, and the total settlement amount is greater than \$250,000.

Within the past few years, CMS has also made advances on the Liability Medicare Set-Aside (LMSA) process. As guidance continues to unfold, it is imperative that attorneys and claimants work closely with a settlement planning expert to avoid Medicare issues. Failure to comply with Medicare Secondary Payer provisions may result in severe consequences for the attorney and the claimant.

Funding a Medicare Set-Aside

There are two methods of funding a Medicare Set-Aside: with a lump sum or with a structured settlement. The structured settlement option may allow the claimant to retain more of the settlement proceeds, as once the MSA funds are depleted each year, Medicare will cover any remaining injury-related medical costs until the structured settlement replenishes the MSA the following year¹. Claimants who choose to fund an MSA with a lump sum payment must deplete the entire MSA before Medicare resumes paying for injury-related medical care.

For more information about Medicare Set-Asides, contact Sage Settlement Consulting today.

¹Claimants who choose the structured settlement option to fund an MSA must make an initial deposit of "seed money" in the amount of the first surgical procedure or replacement and two years of annual payments. The structured settlement will then fund the MSA with annual deposits. Any funds remaining in the MSA at the end of the annual period will be carried forward to the next period.

With local offices across the country, our team offers award-winning comprehensive settlement planning services.

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