

# Medicare Set-Aside Allocations and Structured Settlements



A disabled individual may become qualified for Medicare before age 65 if they have received Social Security Disability income (SSDI) for 24 consecutive months. Claimants involved in Workers' Compensation or liability claims who receive (or are expected to receive) Medicare may benefit from a special account called a Medicare Set-Aside, or MSA.

By Federal law, Medicare does not pay for an individual's injury-related medical services and prescription drugs when the individual receives a settlement, judgment or award that includes funds for future medical and prescription drug expenses. To retain rights to Medicare coverage, it is in the best interest of the individual to consider Medicare's interests at the time of settlement. For this reason, The Centers for Medicare and Medicaid Services (CMS) recommend that parties to a settlement utilize an MSA.

An MSA holds funds to pay for a claimant's future medical treatment and prescription drugs that would otherwise be covered by Medicare. Depending on the type of claim involved, these accounts are known as Workers' Compensation Medicare Set-Aside Arrangements (WCMSAs), No-Fault Liability Medicare Set-Aside Arrangements (NFMSAs) or Liability Medicare Set-Aside Arrangements (LMSAs). In essence, an MSA effectively acts as primary payor for injury-related treatment post-settlement. If the MSA funds are exhausted, Medicare then acts as the secondary payor of the claimant's additional medical expenses.

Considering Medicare's interest involves:

- Establishing an adequate amount in a set-aside account or trust, and;
- Establishing an acceptable administration mechanism. Accounts can be either professionally- or self-administered.

## WCMSAs

CMS advises that a Medicare Set-Aside allocation should be considered in the settlement agreement on any Workers' Compensation case in which the claimant is already on Medicare and the total settlement is \$25,000 or greater, or the anticipated total settlement amount for future medical expenses and disability/lost wages is expected to be greater than \$250,000.

## NFMSAs and LMSAs

Currently there are no Medicare guidelines for NFMSAs. However, CMS considers allocations a viable method to protect their interest and act in good faith.

## STRUCTURED SETTLEMENTS TO FUND MSA ALLOCATIONS

While a conventional injury settlement consists of a one-time sum of money, a structured settlement usually includes cash at the time of settlement to cover immediate expenses, plus guaranteed periodic payments customized to meet the needs of injured people and their families for years into the future. CMS recognizes structured settlements as a useful way to fund MSAs, since periodic payments preserve the integrity of the account. If the injured party exhausts the MSA funds and incurs additional medical expenses in a given year, Medicare will pay the additional medical expenses until the next structured settlement annuity payment is received.

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