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USING A STRUCTURED SETTLEMENT TO FUND A MEDICARE SET-ASIDE ARRANGEMENT

By Thomas D. Begley, Jr., Esquire

Under the Medicare Secondary Payer Act Medicare makes conditional payments for medical expenses for beneficiaries with the understanding that the liability or no-fault insurer will repay Medicaid “promptly” upon settlement of the claim. Medicare Set-Aside Arrangements typically arise in a worker’s compensation case involving a lump sum settlement. Medicare takes the position that the worker’s compensation insurance was responsible for the worker’s future medical bills and by the worker accepting a lump sum liability for the worker’s future medical bills should not be shifted to Medicare. In these situations Medicare requires that a Medicare Set-Aside Arrangement be established from the lump sum payment to pay the future medical benefits on behalf of the worker.

In establishing what portion of a settlement or award is being set aside for future Medicare claims, Medicare will rely on a treating physician’s report or on the claimant’s medical expense history. The physician must devote a section of his or her prognostic analysis to the question of future medicals, and a settlement amount can be set aside on that basis. Medicare should review and approve the settlement plan prior to its finalization. Typically, workers involved in Medicare Set-Aside Arrangements are disabled and are receiving SSD and Medicare. An additional issue in these cases is whether the worker’s compensation payment reduces SSD benefits. In some states the WC payment reduces the SSD payment; in other states the SSD payment reduces the WC payment. If a case is settled and a Medicare Set-Aside Arrangement is not established, Medicare has no liability to pay for the future medical bills of the injured worker.

In determining reasonableness, Medicare considers the following factors:

- Date of entitlement to Medicare
- Basis for Medicare entitlement (disability, ESRD or age)
- Type and severity of illness or injury
- Age of beneficiary
- WC classification
- Prior medical expense
- Amount of lump sum or structured settlement
- Commutation period

- Beneficiary's living arrangement
- Appropriateness of medical coverage
- Medical records

A Medicare Set-Aside Arrangement is required if the claimant is already a Medicare beneficiary, or if the claimant is not already a Medicare recipient then Medicare will require a set-aside only if there is a reasonable expectation of Medicare enrollment within 30 months of the settlement date and the total anticipated settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be greater than \$250,000. This is exclusive of prior payments. Since many worker's comp claimants are receiving SSD, it is likely that they will be receiving Medicare within 30 months of the settlement date.

Medicaid accepts the worker's "rated age." A disabled person is likely to have a shorter life expectancy than a normal person. Insurance companies will look at an individual's medical records and determine a rated age for the beneficiary. Medicare will accept the rated age rather than the actual age. Because of the rated age, the number of years that Medicare will have to pay is significantly reduced. Because the future Medicare payments are reduced, the amount required to be deposited in the Medicare Set-Aside Arrangement will also be reduced.

Normally, in a lump sum arrangement Medicare would not pay until all funds in the arrangement have been exhausted. However, in a structured settlement situation payments are received periodically. If the funds in the arrangement are exhausted prior to the date for the next periodic payment, Medicare may make the payment for those services between the date the funds are exhausted and the date when the next annuity payment is received. However, Medicare will not make payments until the lead contractor verifies that the funds apportioned to the period, including any carry-forward amount, have been completely exhausted. If funds received in any given period are not exhausted, they may be carried forward to the next period.



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