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Medicare Set Aside Funding & Administration Overview

Medicare Set Aside (MSA) funding impacts the distribution of money for an injured worker's Medicare-covered expenses in the future. How an individual's funds are distributed and administered has implications on their future care and their ability to receive Medicare for expenses related to the work injury. This resource will provide some basic knowledge about MSA Funding options and administration options to consider.

Funding Options for Medicare Set Asides

- The preferred method for funding a Medicare Set-Aside is with a structured settlement that preserves the funds over time. This is also the most economical way to fulfill the responsibility to protect Medicare's interests.
- A second method for funding a Medicare-Set Aside is payment in a single lump sum of cash. A one-time payment delivers no cost savings and leaves injured workers more susceptible to losing eligibility for Medicare coverage in the future.

Seed Money and Structured Settlement

- The seed money is the initial amount of money that is paid in a one-time disbursement to a Professional Administrator (Professional Administration), or to the Injured person (Self Administration) to establish the MSA account.
- The seed money is required by ***The Centers for Medicare and Medicaid Services***, to be placed into a separate interest-bearing account, not commingled with other funds, and must be liquid and easily/immediately available (no CDs, other investments).
- The seed (money) is required to cover the first expected future surgery or procedure for each body part, and/or limb/joint replacement, and the first two years of expected Medicare-covered expenses.

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- Structured MSAs will pay subsequent annual payments (following the seed payment), into an MSA interest-bearing account and will not be commingled with other funds – as outlined by CMS.
- Rules surrounding administration of funds can be viewed in the **CMS Self – Administration Toolkit for Workers' Compensation Medicare Set-Aside Arrangements (WCMSA's).**

Structured Settlement - Medicare Set Aside – Benefit Types (Order Reflects-Common Usage)

Temporary Life

- Payable for a set number of years, only if the person is living. **Benefit most often used.**

Period Certain/Certain Only

- Payable for the set number of years, guaranteed, either to the injured worker, or their beneficiary.

Life Only

- Payable for the lifetime of the injured worker. Upon death, payments cease.

Life & Certain

- Payable for the guaranteed period or for life, whichever is longer. If the injured worker passes prior to the guarantee period ending, remaining payments will go to a beneficiary.

* ***Reversion Options*** are available that allow unused premium to be returned to the payor once the injured worker passes away. These options should be discussed with the structured settlement consultant and your professional administrator.

Lump Sum Payment - Medicare Set Aside

One-time distribution/payment of the total Medicare Set Aside Funds to:

- Professional Administrator
- Injured Worker

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Medicare Set Aside and Funding

What are the differences between a Structured Medicare Set-Aside and a lump sum? What is Medicare's position about being the secondary payer, and use of the MSA funds?

	Structured MSA	Lump Sum
MSA funding	• Seed Money = first two years of medical, plus first procedure/surgery • Annual payments for life expectancy/lifetime	• Entire MSA paid in one cash payment (only recommended on small dollar figures).
Medicare Secondary Payer	• If CMS approved the MSA, and money exhausts in any given year, Medicare will step in with coverage until the next annual annuity payment. • Temporary Exhaustion	• If CMS approved the MSA, and funds exhaust, Medicare will step in and make payments ONLY if funds were spent appropriately • Permanent Exhaustion
MSA Usage	• Account cannot be depleted for more than one year.	• High probability of depletion and improper usage could result in loss of Medicare coverage related to the work injury

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Administration Basics

An individual can administer their own medical funds or can use a professional administrator. Regardless of which administration option is chosen, there are certain CMS administration guidelines that must be followed to avoid jeopardizing future injury-related coverage.

CMS HIGHLY RECOMMENDS

Professional Administration

"It is highly recommended that settlement recipients consider the use of a professional administrator for their funds."

- WCMSA Reference Guide

MSA FUND USAGE

MSA funds are primary to Medicare and may only be used for expenses that are both Medicare-allowable, injury-related, and where the date of service occurs post-settlement

ACCOUNT SETUP

Funds must be deposited to a separate interest-bearing account and not commingled with other funds of any type.

REPORTING & ATTESTATION

An attestation of the MSA's use in the prior year must be filed to CMS annually, as well as when the MSA permanently exhausts

HANDLING UNSPENT FUNDS

Funds deposited into an MSA must remain within the MSA. Unspent funds may not be withdrawn, regardless of changes to condition, Medicare formulary or beneficiary Medicare entitlement / enrollment status

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Medicare Set Aside Administration Types

Self-Administration and Professional Administration are two administration options for managing a future medical allocation. A professional administrator is an independent party that helps both sides bridge the gap to settling future medical claims and ensures account compliance after settlement.

Professional Administration

- Enhances post-settlement compliance and protects injured worker's rights to future Medicare benefits by ensuring proper spend, accounting, and annual reporting
- MSA funds are placed in a separate interest-bearing account and administered by the professional administrator
- Medical bills are reviewed and appropriately paid
- Savings on provider bills, Rx, and other medical expenses
- Administrator tracks MSA balance and spending trends
- Administrator has expertise with determining fee schedules and what is allowable per Medicare and settlement agreement
- Provides for a medical advocate
- Administrator properly distribute funds upon death

Self-Administration

- Injured worker is responsible for managing MSA funds and reporting the annual spend to Medicare
- Injured worker is responsible for reviewing the medical bills and only paying for items/services related to the WC injury and covered by Medicare
- Injured worker is responsible for reviewing medical bills and only paying for items or services related to the WC injury and covered by Medicare
- Self-administration toolkit is the primary resource for understanding the complexities of properly managing and accounting for MSA funds
- CMS holds injured worker accountable for the same standards as if funds were professionally administered
- If the injured worker inappropriately spends (even unintentionally) MSA funds and loses their benefits, they may try to come back and litigate

*There is sometimes confusion with Cash Refund Annuities returning premium to the primary payer once the injured worker passes away and MSA funds remaining in the account once the person passes away and the funds can revert back to the primary payer based on the terms of the settlement agreement. These are two separate recoveries and are often referred to as reversionary.

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Increasing CMS Oversight for MSAs

CMS holds injured worker accountable for the same standards as if funds were professionally administered, however common mistakes can be made if an injured worker doesn't have the knowledge to properly administer their funds.

CMS Expectations	Common Issues
✓ Place funds in separate interest-bearing bank account	✗ Funds often get commingled with other funds
✓ Identify if treatments or RX is related to injury and Medicare covered	✗ Funds are used for unrelated injured treatments and non-Medicare covered items
✓ Pay bills according to specific state workers' compensation fee schedule of usual and customary	✗ Providers typically over bill and injured worker is unaware of the right fee schedule rates
✓ Track all expenses, treatments, dates of service, and related ICD-9/10 codes annually	✗ No reporting is completed or submitted

! If the injured worker doesn't follow these guidelines for their Medicare Set Aside, their Medicare benefits related to their WC injury could be jeopardized.

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