



## **Medicare Set Aside Administration – Frequently Asked Questions**

### **How is the Medicare Set Aside (hereinafter MSA) account administered?**

The Centers for Medicare and Medicaid Services allows your MSA account to be administered in any of the following ways:

- Self-administered account
- Custodial account
- Medicare Set Aside Trust account
- Medicare Set Aside/Pooled Special Needs Trust

### **What is a self-administered MSA account?**

Although it is perfectly legal to self-administer your MSA account, it can be a daunting task, as well as a huge liability. If you elect to self-administer your account, you must have both the financial and medical wherewithal to do so. From a financial standpoint, you must be proficient in bookkeeping and accounting. CMS requires you to do an annual filing every year.

These annual filings are required by CMS to show how you have spent the money in the account and if the funds were used appropriately for Medicare expenses related to the accident. The slightest mishap in accounting or any misappropriation of the funds could result in losing your Medicare eligibility. If you are self-administering your MSA account, you will also be responsible for filing a self-attestation form when the money in your account has been dissolved.

### **What can I use my Medicare Set Aside account to pay for?**

The funds can be spent ONLY on Medicare allowable items related to treatment for your accident related injuries. In other words, the MSA funds can be spent only on medical items related to your accident that Medicare would have ordinarily paid for had there not been an accident. Instead of you billing Medicare for the medical treatment received, you are required to use the funds in the MSA account to pay for that treatment.

### **What are the requirements for self-administration of MSA account?**

One of the requirements by CMS is that your MSA funds be allocated to a separate, interest-bearing account that is insured by a Federal Deposit Insurance Corporation (FDIC) bank. You must keep these monies separate from your other bank accounts. This account may be a savings or checking account.



If the set aside is professionally administered, the MSA administrator must prepare an annual accounting summary concerning the expenditures from the set aside and send it to the CMS Medicare contractor responsible for monitoring the individual's case. The purpose of these filings is so that CMS can determine the funds have been exhausted properly.

From a medical standpoint, there are complexities involved knowing medical billing rates, medical fees schedules and medical coding issues. You have to be responsible for knowing what is Medicare allowable related to your accident and what is not Medicare allowable. The best gauge for determining what is covered by Medicare is the actual Medicare set aside analysis that was completed by the independent company or MSA specialist.

### **What are my options for a professionally administered Medicare set aside account?**

If you are considering professional administration, you have several options. Most professional administrators of set asides provide the service through a custodial arrangement or trust agreement. A custodial arrangement is an agreement under which a nominee or registered owner holds an asset or property as a custodian on behalf of an actual owner (beneficial owner). These custodial arrangements are contractual agreements and do not create the same level of fiduciary obligation on the part of the administrator as is possible with a trust. Typically, custodians do not need any type of licensure whereas trust companies or banks do, which is another layer of protection for the injury victim's funds.

### **What is a MSA Trust Agreement (MSAT)?**

An MSAT is a formal trust agreement administered by a corporate trustee typically paired with a professional Medicare Set Aside administrator. With an MSAT, you get a trustee that has a fiduciary duty paired with a set aside administrator who can handle the intricacies of managing set aside funds and reporting to CMS. If the trustee or administrator can no longer perform their duties, a new trustee or administrator may be appointed but the fiduciary obligations and creditor protections of the trust remain. Trusts are covered by state trust and fiduciary laws.

### **Does Medicare own the money in the MSA account?**

No, the monies belong to the injury victim not Medicare. This means at death the unused funds go to the injury victim's beneficiaries (assuming the custodial agreement or trust provide for this). When the injury victim dies, the set aside should be left "open" for 15-27 months since Medicare providers have a long period to bill for services rendered and there may be bills the set aside must pay.



### **What about the interest earned in the MSA account?**

The interest earned on the MSA account cannot be used for any purpose outside of MSA criteria. The interest earned on the monies in the set aside are taxable but the set aside funds can be used to pay taxes. The interest is retained in the set aside and can't be withdrawn.

### **What if the settlement involves an incompetent injury victim?**

If a settlement involves someone incompetent to handle their own affairs then obviously a professional administrator must be used.

### **Summary of MSA administration**

There are no "Medicare Set Aside police" monitoring set asides but if the MSA is improperly administered then that can lead to a loss of coverage for injury related Medicare covered services. In the event of improper expenditures, the injury victim would have to replenish the set aside and exhaust those funds properly before getting Medicare coverage again for injury related care. Accordingly, it is vitally important to make sure the set aside is properly administered. Given the government's increased efforts to enforce the Medicare Secondary Payer Act a la mandatory insurer reporting, CMS has more information than ever to make sure of proper enforcement.