



## **A Primer on Medicare Set Aside Self-Administration**

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The purpose of this article is to provide guidance to attorneys and injury victims for self-administered Medicare set aside (MSA) accounts. In administering MSAs, funds may only be used to pay for future Medicare covered, injury related medical expenses of the plaintiff. The Center for Medicare and Medicaid Services' (CMS) guidelines indicate that the set aside funds should be placed in an interest-bearing account and may be either professionally administered or self-administered (Ref: 10/15/04, Memo Q 2).

The obligation to administer MSA funds begins as soon as the attorney releases the settlement proceeds to the plaintiff. The plaintiff has the option of funding the MSA with a single lump sum out of the settlement proceeds or with future periodic payments using a structured settlement annuity (Ref: 7/23/2001 CMS Memo). When a set aside is funded with a lump sum, Medicare begins to pay for injury related health care as soon as the account is totally exhausted. When a set aside is funded with an annuity, Medicare begins to pay for injury related health care when there is "temporary exhaustion" each year.

With an annuity funded MSA, there are two components of the set aside. The first component is the "seed money" which is used to cover the first 1-2 years' worth of qualified medical expenses. The second component is future periodic payments from the annuity. One year from the anniversary date of the settlement, the annuity payments will start to pay into the set aside account. When the funds are temporarily exhausted in any given year, Medicare begins paying for treatment related to the injuries. During this time of temporary exhaustion, the plaintiff will be responsible for any co-payments and deductibles. If the funds are not all spent in a given year the remainder is carried over to the next year (Ref: 4/22/03 CMS Memo). With annuity funding, it functions much like a yearly insurance deductible. The MSA report should indicate the breakdown of the seed money, annuity payments and timeframe of the payments. The duration of the annuity payments is based on the pre-determined life expectancy of the individual, which may be less than normal life expectancy.

We recommend that attorneys issue separate checks from their trust account to fund a lump sum MSA, one for the MSA amount and one for the balance of the settlement proceeds. The check should be written to the plaintiff with the subject referencing: John Doe Medicare set aside Account or John Doe MSA Account. To take it a step further,



some attorneys actually request the defendant issue a separate check to seed or fully fund the MSA account. If the MSA is being funded with a structured settlement, the annuity will also be funded by the defendant with the seed being included in the cash paid at settlement.

Prior to releasing any settlement monies, attorneys should also have the plaintiff sign a separate document indicating they understand what their obligations are for self-administering the MSA account. Synergy offers an MSA consultation which includes a separate waiver for the plaintiff to sign indicating they understand the MSA obligations and are willing or not willing to create a set aside account. Attorneys do not have to hire an expert to advise and prepare such a document but it is the prudent way to ensure all parties are protected.

After settlement and after establishing an MSA, Medicare may refuse to pay for any medical expenses related to the injury until the amount set aside for future medical expenses is properly exhausted. To insure compliance, there are certain steps that should be followed with administration of the MSA account.

### **Establishing the MSA Account**

The Medicare set aside funds must be placed in an interest-bearing checking or savings account and be funded by either a lump sum or via seed money, with future annual payments from an annuity. The funds cannot be placed into stock, bonds, mutual funds or any other types of investments. We recommend a checking account be established with a debit card for reasons to be explained below. It is not the responsibility of the personal injury attorney to oversee or assist in the process of establishing a self-administered MSA account. The plaintiff is responsible for opening the account. This account must be a dedicated account for qualified medical expenses and not comingled with any other non-MSA funds.

Note: If the MSA is being funded with an annuity, then a direct deposit form should be completed and sent back to the life insurance company issuing the annuity. This will ensure the annuity payments go directly to the MSA account and are not mailed directly to the plaintiff.

### **Use of the Funds in the MSA Account**

The plaintiff can use funds in the Medicare set aside account only for qualified medical expenses resulting from the accident, which would otherwise be paid for by Medicare. Funds in the MSA account cannot be used to pay for non-Medicare covered medical



services. The best gauge for determining what the funds should be used for is the Medicare set aside report that was completed by the independent company or MSA specialist. This report should have a life care plan with a line itemization of medical treatment, prescription drugs, durable equipment and other services covered by the MSA account.

The plaintiff may also use the MSA account to pay for the following costs that are directly related to the MSA account: document copying charges, mailing fees/postage fees, any banking fees related to the account and income tax on interest income from the set aside account (Ref: WCMA Reference Guide 2013). Any interest earned on the MSA funds must be retained and used for qualified medical expenses.

### **Fee Schedule and Bill Pay for the MSA Account**

The MSA analysis is either prepared based on the usual and customary fee schedule for liability cases or on the state's worker's compensation fee schedule for worker's comp cases. The MSA administrator will not be able to pay Medicare rates for services paid for out of the MSA. In the real world, doctors have the freedom to charge whatever rates they desire. It is important that the plaintiff attempt to negotiate with their providers for the lowest possible cost. This is easier said than done. With an MSA, the plaintiff essentially becomes a private payer for all Medicare covered treatment related to the accident until exhaustion. The injury victim must also explain to their providers that Medicare should not be billed for accident related treatment once their case has resolved.

### **Accounting and Attestation of the MSA Account**

The administrator must maintain accurate records of all expenditures from the Medicare set aside account. The plaintiff may also want to keep a receipt of each and every payment made, as an added precaution. Using a checking account debit card from the segregated MSA account is an easy way to keep an accurate accounting. Anytime the injury victim goes to treat with a provider, they simply use the debit card to pay for the qualified medical expense. If the account balance ever gets down to zero, they can print out the bank statements to send to Medicare.

The plaintiff will need to submit a final accounting ledger within 60 days of the MSA funds being depleted. The annual and final accounting should include evidence of all the expenditures from the Medicare set aside account. For liability MSAs, the accounting only has to be done upon the account balance reaching zero. In worker's



compensation cases, there are annual reporting requirements. The purpose of these account filings is for Medicare to confirm the MSA funds have been spent appropriately.

Once an MSA account has been completely exhausted and assuming the funds have been spent properly, the plaintiff has met their obligation to protect Medicare's interests. They can then start to submit bills to Medicare again. At that time, the plaintiff should send a final attestation to Medicare as proof the funds were spent appropriately. The current address for sending final accounting on MSA accounts is:

Medicare Secondary Payer Recovery Center  
Attention: MSP-Medicare Set aside Reconciliation (NGHP)  
P.O. Box 138832  
Oklahoma City, OK 73113

For worker's compensation cases, the annual self-attestation should continue through depletion of the account. It is important that the plaintiff understands and complies with these reporting requirements. The self-attestation letter must be signed and forwarded to CMS' Medicare contractor no later than 30 days after the end of each year (beginning with one year from establishment of the MSA account). We recommend the administrator keep these records indefinitely, in the event Medicare ever audited the file.

If there were funds in the account used to pay for items other than qualified medical expenses related to the accident, Medicare may deny coverage for the injury related treatment until the misappropriated amount is replenished. For example, if the plaintiff purchased a hot tub or season tickets to their favorite sports team with MSA funds, they would have to replenish their account with an amount equal to what was improperly used and then spend that money on injury related Medicare services before Medicare would cover future injury related treatment.

### **Terminating the MSA Account**

The MSA account is closed once the plaintiff passes away. In the event, the plaintiff dies before the funds in the Medicare set aside account are exhausted, the MSA account should remain open for at least 6-12 months from the date of death to enable any outstanding, qualified medical bills be paid. After all of the outstanding medical bills have been paid, any funds remaining in the Medicare set aside account are payable to the plaintiff's beneficiary or subject to the appropriate State probate laws.



It should be noted that most of the above referenced guidelines come directly from the CMS memorandums relevant to worker's compensation cases. Another helpful tool for administering MSA accounts is the, Worker's Compensation Guidebook, Here is a link to the book:

<http://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/Downloads/March-29-2013-WCMSA-Reference-Guide-Version-13-copy.pdf>

### **Conclusion**

Although Medicare allows a plaintiff to self-administer the MSA account, it can be a daunting task and potentially create significant liability. If the plaintiff elects to self-administer their account, they must have both the financial and medical administration competency to do so. There are no "Medicare set aside police" monitoring set asides but if the MSA is improperly administered; it can lead to a loss of coverage for injury related Medicare covered services.

Attorneys should explain to their injury victim clients the intricacies of self-administration and let them make an informed decision before opting to self-administer. Professional administration is the recommended method to ensure full compliance with Medicare Secondary Payer requirements and to eliminate any possibility of the plaintiff ever losing their Medicare coverage. There is an additional cost for professional administration but with that cost, comes the peace of mind that health coverage will never be jeopardized.

Synergy offers a Medicare set aside administration program through the use of a formal trust agreement administered by a corporate trustee and a separate professional Medicare set aside administrator. With a Medicare set aside Trust, the plaintiff has a professional trustee that has a fiduciary duty paired with a set aside Administrator, who handles managing the set aside funds and reporting to CMS. Administrative fees/expenses for administration of the MSA and/or attorney costs specifically associated with establishing the MSA cannot be charged to the set aside arrangement (Ref: 5/7/04 Memo). Therefore, the professional administration costs must be paid for by the injury victim.

*For all of your Medicare secondary payer compliance needs, please visit us at [www.synergysettlements.com](http://www.synergysettlements.com) or call us at 877-242-0022.*