

Do I Need a Medicare Set-Aside?

- What is a Medicare Set-aside?** A Medicare set-aside is a fund created in settlement of a personal injury claim (workers' compensation, liability or no fault). The fund is created from part of the settlement amount to be used to pay future medical expenses that are (a) related to the injury and (b) that would otherwise be payable by Medicare.
- When is a Medicare set-aside required?** A Medicare set-aside (MSA) is required in the settlement of any workers' compensation case in which future medical benefits are closed and in which the injured worker is at the time of settlement eligible for Medicare benefits. Also, an MSA is required in the settlement of any workers' compensation case in which future medical benefits are closed and in which the settlement amount is greater than \$250,000 and in which the injured worker can reasonably be expected to become eligible for Medicare benefits within 30 months of the settlement.
- Who is eligible for Medicare?** Generally, Medicare benefits are payable to persons who are 65 years old or older, or who have been receiving Social Security Disability Income benefits for 24 months or longer, or who are suffering from end-stage renal disease.
- Who can "reasonably be expected to become eligible for Medicare within 30 months?"** A person is reasonably expected to become eligible for Medicare within 30 months if at the time of settlement he or she:
- Is at least 62 and a half years old, or
 - Has applied for or been approved for Social Security Disability Income benefits, or
 - Has been denied Social Security Disability Income benefits but plans to appeal, or
 - Has end-stage renal disease but does not yet qualify for Medicare.
- How is the MSA created?** Four steps are typically involved in creating the MSA:
- Analysis of the claim and medical information in order to determine the amount of money needed to put in the fund.
 - Negotiation of a tentative settlement and preparation of draft settlement documents to settle the workers' compensation case incorporating terms for creation and administration of the MSA.
 - Obtaining approval of the Centers for Medicare and Medicaid Services (CMS) of the settlement and the proposed MSA.
 - Finalizing the settlement and funding the MSA.

How is the amount of the MSA determined?

Typically, the MSA amount is determined by expert analysis of the claim and medical information, considering several factors, including:

- Date of and basis for entitlement to Medicare
- Type and extent of injury or illness
- Age of the injured worker and impact of injury or illness on life expectancy
- Extent of disability
- Prior and future medical needs related to the job injury
- Compensability period
- Medical prognosis
- Medicare coverage limitations
- Workers' compensation fee schedules and usual and customary costs
- Method of funding the MSA

How is the MSA funded?

The MSA can be funded either by a lump sum payment of cash from the employer/insurer or by the employer/insurer purchasing a structured settlement annuity or by a combination of cash and an annuity.

Who administers the MSA?

The MSA can be administered either by the injured worker (self-administered) or by a third-party trustee, such as a guardian or trust company.

What is involved in administration of the MSA?

The money is deposited in an interest-bearing account from which Medicare-covered medical expenses related to the job injury will be paid once the injured worker has become eligible for Medicare. The fund administrator receives the medical bills, makes sure the expenses would be coverable by Medicare and are related to the job injury, makes payment, retains copies of all bills and payments, makes annual reports to CMS and makes a final accounting when the funds are exhausted or when the fund is no longer needed.

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