

Medicare Compliance

HELPFUL HINTS

► *Medicare Definition*

Medicare is health insurance provided by the federal government. Medicare acts as a secondary payer in the context of workers' compensation and liability claims involving bodily injury. The intent of Congress is to reduce federal spending and to protect Medicare's financial integrity by expanding its recovery rights.

► *Medicare Benefit Eligibility Requirements*

An individual is eligible to receive Medicare benefits for certain medical and hospital expenses if they meet one of the following criteria:

- 65 years of age or older;
- Receiving Social Security Disability benefits for at least twenty-four (24) months; or
- Suffering from end-stage renal disease or Lou Gehrig's disease

► *Medicare's Recovery Rights*

Pursuant to 42 C.F.R. § 411.24(b), The Centers for Medicare and Medicaid Services (hereinafter "CMS") may initiate recovery upon learning that payment has been made or could have been made under workers' compensation, any liability or no-fault insurance or an employer's group health plan. As to the amount of recovery allowable, if CMS does not have to take legal action to recover, CMS can recover the lesser of the following:

- The amount of the Medicare primary payment; and
- The full primary payment amount that the primary payer is obligated to pay under this part without regard to any payment, other than a full primary payment that the primary payer has paid or will make, or in the case of a third-party payment recipient, the amount of the third-party payment.

However, if legal action is undertaken by CMS, CMS may recover double the amount of the payment Medicare made as a primary payer.

► *Medicare Set-Aside (MSA)*

A Medicare Set-Aside (MSA) is an account that is created in the settlement of a claim that is used to pay for future medical expenses that are:

- Attributed to an individual's work-related or litigation-related injury; and
- Would otherwise be payable by Medicare.

► *When Medicare Set-Aside Requires CMS Approval*

When settling a workers' compensation claim, a Medicare Set-Aside must be submitted to CMS for approval if the future medical aspect of the claim is being settled and one (1) of the following exists:

- The Claimant is currently Medicare eligible and the total settlement amount is greater than \$25,000; or
- The settlement amount exceeds \$250,000 and there is a "reasonable expectation" of Medicare enrollment within thirty (30) months.

► *Funding a MSA Account*

Two methods can be used to fund a set-aside. Specifically, a Medicare Set-Aside can be funded via a lump-sum payment or a structured settlement annuity. Structured settlements are an effective tool in funding Medicare Set-Asides because the cost of an annuity provides a savings to either the insured or the employer. If the set-aside is exhausted between annuity payments, Medicare assumes payment for qualified medical expenses until the release of the next annuity payment disbursement.

► *Administration & Terms of a Medicare Set-Aside Account*

A Medicare Set-Aside can be self-administered by the injured party, a custodian or a guardian. A Medicare Set-Aside can also be managed by a third-party administrator. The account must be an interest-bearing account and the administrator of the account should only allow distribution for those medical expenses related to the injury that would otherwise be covered by Medicare, thereby preventing a burden shift to Medicare after settlement. Also, the administrator must provide CMS with an annual accounting of the expenditures paid from the account. If there is a questionable expense, the administrator of the account should obtain approval from CMS before paying for that expense.

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► **Medicare “Reasonable Expectation” Provision**

A person can reasonably expect to become a Medicare beneficiary within thirty (30) months if at the time of the settlement of their workers’ compensation case, they:

- Are between the ages of 62 1/2 and 65;
- Applied for or have been approved for Social Security Disability benefits;
- Have been denied Social Security Disability benefits but anticipate appealing the decision; or
- Suffer from aforementioned renal disease or Lou Gehrig’s but do not yet qualify for Medicare.

► **Disclaimer: All settlements Must Consider Medicare’s Interests**

CMS guidelines are “workload thresholds” and are not substantive “safe harbor” thresholds. All settlements are required to set-aside sufficient funds in the settlement to protect Medicare from reasonably anticipated Medicare-covered medical expenses. While not required, Medicare Set-Asides are an effective mechanism for demonstrating that the parties considered Medicare’s interests as a secondary payer.



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