

# NEW MEXICO INJURY ATTORNEY BLOG

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## **Medicare Set-Aside Liens to Cover Future Personal Injury Related Medical Expenses**

Personal injury cases often involve Medicare provided medical benefits. Medicare will claim liens against any personal injury settlement for both past and future medical expenses. Past medical benefits are hard enough to address due to the difficulty of working with Medicare on the settlement of its liens. Future medical is even more difficult due to the uncertainty of those Medicare benefits.

Prior to the settlement of any personal injury claim, it is critical that all Medicare liens be addressed. This includes liens to cover future benefits. Coverage of future Medicare benefits is addressed through Medicare Set-Asides. A Medicare Set-Aside essentially requires that a portion of the settlement or verdict be set aside to cover future medical benefits related to the injuries suffered in the accident. Medicare cannot claim liens against the settlement for unrelated medical benefits.

Failure to set aside funds for future Medicare benefits can be financially devastating. Medicare will take the position that no future Medicare benefits will be provided until the entire settlement amount has been exhausted. In addition, it becomes more difficult to dispute what is and is not related to the accident. Therefore it is important to address the set aside prior to settlement. Negotiation of the set aside up front can result in substantial reductions in the amount required to be set aside.

Basically, the negotiated set aside will fix an amount that must be expended by the injured person prior to Medicare picking up any additional medical expenses. Once that amount has been expended, then Medicare benefits will resume. Again, in the event that the set aside is not negotiated in advance of settlement, Medicare may take the position that the entire settlement amount must be expended prior to the resumption of Medicare benefits.

Due to the extreme position that Medicare may take in the event of failure to negotiate the set aside in advance of settlement, it is important to begin this process well before an anticipated settlement or trial. Unfortunately, this is easier said than done due to the difficulty of working with Medicare. It is a slow and tedious process but essential to protect the funds of a personal injury settlement or judgment.

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