

NEW MEXICO INJURY ATTORNEY BLOG

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Calculating the Medicare Set-Aside: Start Early!

Calculation of the Medicare set-aside in a personal injury action can be a long and tedious process. The law allows for a reasonable allocation for future medical expenses. Defining "reasonable" is anything but easy.

The set-aside calculation takes into consideration the patient's current condition, past medical treatment, future medical needs, life expectancy along with numerous other factors. Medicare may judge "reasonable" future medicals at a far higher amount than is suggested by the facts. An excessive set-aside coupled with the lien on past paid Medicare benefits may render a settlement or judgment worthless to the injured person as the fight for recovery is purely for the benefit of Medicare. This is particularly true in cases with catastrophic injuries and uninsured/underinsured or judgment proof defendants. There simply is not enough money to go around.

Worse still, the review and approval process can take months upon months to conclude. All the while, the statute of limitations is ticking along. The lengthy time necessary to conclude the review and approval can push a case that would otherwise settle into litigation. This of course places even greater costs on the injured person. Even then, Medicare holds the cards and they do not have to budge on their numbers. At some point, a rational plaintiff must decide whether litigation to pay Medicare and attorney fees is really worth the time and stress.

The bottom line is that the process with Medicare must begin early. Time is not really on your side in these cases. On the one hand there is Medicare and on the other the statute of limitations. The statute of limitations has a way of sneaking up on plaintiffs and many lawyers will not, and those that do should not, touch a case with these kinds of issues and short fuse on the statute of limitations.

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