



Changes Coming for Medicare Set-Aside Arrangements

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The law governing Medicare Set-Aside Arrangements (“MSAs”) in personal injury liability lawsuits may soon be changing. In personal injury liability cases, MSAs are funds from a judgment or settlement allocated to cover the future medical expenses of a Medicare beneficiary. If a Medicare beneficiary receives funds to pay for his or her future medical expenses, those funds must be exhausted before Medicare will pay for healthcare expenses because Medicare is a so-called “payer of last resort.” If Medicare pays for services that a beneficiary should have paid for with settlement funds, Medicare has the right to recoup its payments from the beneficiary and, in some cases, from the person or entity that paid the settlement to the beneficiary.

Currently, parties in workers’ compensation cases may utilize a Medicare review process to determine how much money must be put into a MSA for future medical expenses. But no such option exists for liability settlements because MSAs in liability settlements are much more complicated. Settlements in liability cases usually resolve all claims in the case, which could include property damages, past and future medical expenses, pain and suffering, etc. Consequently, it is often impossible to determine how much of a settlement the parties intended to compensate for future medical expenses. Obviously, most plaintiffs who are covered by Medicare prefer to have as little of the settlement funds allocated to future expenses as possible. But defense lawyers and their clients have to protect themselves against any future claims from

Medicare if plaintiffs misappropriate settlement funds that they should have used for future medical expenses.

In light of all this confusion, the Centers for Medicare and Medicaid Services (“CMS”) recently announced that it was considering enacting new regulations to clarify when MSAs are required in personal injury liability cases. If a MSA is required, the new regulations will also provide guidance for the parties to determine how much of a settlement must be apportioned to a MSA. The proposed options include a review process for obtaining Medicare approval of MSAs and safe harbors to protect parties from claims by Medicare down the road. A complete list of the proposed options can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2012-06-15/pdf/2012-14678.pdf>