An Overview of Medicare Set-Aside Accounts

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One of the most common misperceptions in the field of personal injury is that financial insecurity ends for the plaintiff once the settlement check is received. The assumption is that the award is large enough to cover the plaintiff's past, present and future medical costs and that there will be little continued financial planning. However, if one's injury derives from a work related accident, or if the injured is receiving or expecting to receive Medicare, the planning becomes more complicated than simply cashing the check.

When an injury occurs because of someone else's negligence, usually a personal injury lawsuit is required to obtain funding for both past and future medical costs as well as for pain and suffering. To reach a settlement that is fair and accurate, the parties will determine past and current medical costs, while trying to predict future medical expenses as well. If the injury falls under the workers' compensation system, or if one is receiving or expected to receive Medicare in the future to help pay for medical related costs, there may be a requirement to create a Medicare Set-Aside account for reimbursing the government for medical expenses related to the injury. Medicare Set-Aside accounts are a trust or other arrangement by which proceeds from a settlement are reserved for future medical expenses.

Medicare Set-Aside accounts are required for workers' compensation settlements, but are not yet required for personal injury proceeds, unless one is receiving or will receive Medicare relating to the injury. Medicare Set-Asides accounts are required in these situations because the government is considered only a "secondary" payer for future medical costs. The government wants to ensure that the injured individual uses settlement funds allocated for future medical expenses before Medicare pays remaining costs. The Centers for Medicare and Medicaid Services (CMS) provide little guidance for how a Medicare Set-Aside account should be held. CMS requires that the total proceed amount be deposited into an interest-bearing account, separate from any other account such as personal savings or checking. However, it is generally held that Medicare Set-Aside accounts be held under much stricter requirements to avoid unnecessary penalties and loss of funds.

Typically, fiduciaries are granted the authority to exercise their own discretion in making decisions regarding administration. In terms of investment decisions, a Medicare Set-Aside account fiduciary should ensure the funds remain highly liquid for accessibility as well as being held in a low risk vehicle. These terms help ensure that the funds are available for predicted future injury- related medical expenses of the type covered by Medicare. Thus money market accounts are more appropriate than high risk stock, deferred annuities or Certificates of Deposit, as the penalties for early liquidation wastes medical funds.

Should unused proceeds remain in a Medicare Set-Aside account after all medical expenses are paid, different actions may be taken depending on the situation. If the beneficiary dies, the remaining account funds may be distributed by Last Will and Testament or by other means after Medicare interests have been protected. If the beneficiary is still alive, and unused funds remain due to medical expenses being lower in a particular year than anticipated, the funds must be rolled forward to the following year.

The law relating to Medicare Set-Aside accounts is extremely complicated and in a constant state of flux. Therefore it is incredibly important to speak with a special needs planner should you be awarded a personal injury settlement or are beginning a claim under the Workers' Compensation system.