

**MEDICARE SET-ASIDE ALLOCATIONS (MSAs)\***  
**A Structured Settlement Consultant with MSA Experience Is a Valuable Asset\***

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**Medicare Set-Aside Allocation** – this phrase has caused a chill in the insurance industry since 2001 when Medicare began issuing memos to provide guidance to explain how Medicare's interests should be protected when resolving workers compensation claims. In fact, an entire new industry has evolved with vendors that provide a multitude of Medicare Set-Aside products and services.

While Medicare Set-Asides have become main stream in workers compensation claims, the implementation of Senate Bill 2499 (the Medicare, Medicaid, and SCHIPP Extension Act of 2007) is certain to cause an increased amount of activity as liability carriers, self-insureds, and other primary payers when it becomes effective July of 2009. This bill requires reimbursement of conditional payments to Medicare and additional reporting requirements when a claimant is a Medicare beneficiary. While CMS has not provided complete details about implementation of this legislation, it is clear that Medicare is reaching outside of the workers compensation arena to ensure that its interests are protected.

Most insurers have established approved vendors, specific claims handling procedures and language to include in settlement agreements to ensure Medicare's interests are protected when resolving claims. Insurers will continue to refine their processes and procedures as Medicare asserts itself further into the liability arena.

Structured settlement consultants who understand MSP compliance issues have seen an increase in annuities used to resolve workers' compensation claims. This expertise will be invaluable if and when MSA's become routine in liability claims.

***Let's take a look at how annuities are used in funding Medicare Set-Aside Allocations.***

CMS requires that a Medicare Set-Aside Allocation be funded in one of two ways:

- **Lump Sum** for the entire MSA amount or
- **Cash to set up or cede the MSA and an Annuity** to provide annual payments to replenish the MSA account to be paid over the claimant's life expectancy

The combination of cash and an annuity typically saves 25-50% off the lump-sum MSA amount. There are a number of different types of annuities a defendant or its insurer can purchase to meet CMS requirements in spreading out the annuity over a claimant's life expectancy, or lifetime.

A **Temporary Life Annuity** provides an annual MSA payment for the claimant's life expectancy, only if the claimant is living. This is usually the *least expensive annuity* used in funding an MSA annual payment. The disadvantage of this type of annuity is that the payments stop at the death of the claimant and there is no residual value or payment that can pass to a claimant's beneficiary or as a refund to the defendant or its insurer. For example, if a defendant pays \$100,000 to provide \$1,000/year for 30 years and the claimant dies after one year, the defendant has paid \$100,000 for a \$1,000 payment. This type of annuity is attractive for small MSA amounts.

A **Life Only Annuity** will provide an annual MSA payment for the claimant's lifetime. All payments cease on the death of the claimant/annuitant. This annuity is usually slightly more expensive than a Temporary Life Annuity. As with a Temporary Life Annuity, all payments cease on the death of the claimant. There is no opportunity for recovery of any funds by the defendant or the possibility of the claimant's beneficiary receiving anything on the death of the claimant.

A **Life with Cash Refund Annuity** will provide an annual payment for the life of the claimant, but provides a refund of the unused portion of the annuity premium in the event of the death of the claimant. For example, if the defendant spends \$100,000 for the annuity and the claimant dies after \$50,000 of payments have been paid out, the claimant's beneficiary or the defendant will receive \$50,000 on the claimant's death.

A **Period Certain Annuity** will provide an annual payment for the claimant's life expectancy, whether or not the claimant is living. This payment is guaranteed to the claimant's beneficiary or the defendant on the claimant's death. On death, the payments will continue to be paid to the beneficiary (claimant's family member or the defendant's insurer). As an alternative, many life insurance companies that offer structured settlement annuities provide a commutation product that allows the beneficiary or the defendant to receive a lump sum of the commuted value of any remaining payments on the death of the claimant/annuitant.

## **PROs and CONs of ANNUITY TYPES**

There are advantages and disadvantages to each of the annuity types used to fund the MSA annual payments or to fund the annual fee to pay for professional administrative services for the MSA. It is important to discuss these options with a structured settlement consultant to ensure the claimant and/or defendant's interests are handled appropriately.

## **FUNDING MSA WITH CASH AND ANNUITY PROVIDES ADVANTAGES TO CLAIMANT AND DEFENDANT**

Using annuities to fund an MSA annual payment and/or MSA professional administrative fees provides advantages to the claimant and the defendant.

**From the claimant's perspective**, settlement dollars provided for a Medicare beneficiary's Medicare related future medical expenses are restricted and must be used exclusively for that purpose. With a lump-sum MSA, a Medicare beneficiary must spend the entire amount of the MSA before Medicare will cover Medicare expenses relating to the work injury. If the MSA is funded with the cash and annuity option, Medicare will cover any expenses over and above the claimant's current MSA balance each year.

**From the defendant's perspective, the annuity option is ALWAYS less expensive** than paying the MSA in a lump sum, providing the possibility for saving claims dollars and/or having an opportunity to have extra dollars for negotiation purposes. In addition, the defendant or its insurer can negotiate the settlement to receive the possibility of a refund or the commuted value of remaining payments, in the event the claimant dies before the end of the claimant's life expectancy. Also, because the cash and annuity funding option for the MSA is always less expensive than the lump sum option, there may be additional settlement dollars available to get the claim settled.

A structured settlement consultant should routinely provide rated ages, when applicable, and use other tools at their disposal to lower the annuity cost and the enhance settlement negotiations. The experienced consultant can be even more valuable and should be considered a free resource to an adjuster and provide many more services, especially when settling a claim involving future medicals.

## **SERVICES YOU SHOULD EXPECT FROM A SETTLEMENT ANNUITY CONSULTANT**

- Educating/partnering with an adjuster about identifying candidates for structures can help move cases forward.
- On-site or face-to-face meetings on a routine basis will help the adjuster in a number of ways. When the consultant is on-site he or she can assist in determining which cases are candidates for a structured settlement and especially whether or not a claim requires a future medical cost projection or MSA (with CMS approval) is necessary.
- When settling a claim that requires a Medicare Set-Aside Allocation, the structured settlement consultant and adjuster can discuss the advantages and disadvantages about how an MSA account should be administered: self-administration, self-administration support or professional administration.
- Providing analysis of MSA reports should be viewed as an education tool. Each vendor prepares MSA reports differently and structured settlement consultant's analysis of the narrative in the report and the numbers can provide the adjuster with invaluable information for the settlement process.
- On request, an experienced structure consultant can assist the adjuster in developing settlement strategy.
- The structured settlement consultant can participate in settlement conferences and negotiations.
- Meeting with defense and/or claimant's attorney or claimant directly, if pro se, to explain and present the settlement offers and the advantages of a structured settlement. If settling future medicals involving an MSA, the experienced structured settlement consultant can explain the MSA process.
- Coordinating the settlement paperwork and following up on CMS approval, is another valuable service the consultant can provide, if necessary.

A structured settlement consultant is available at no cost and can provide value added services, such as those related to MSA's outlined in this article. Used effectively, a structured settlement consultant can help settle cases faster, with or without a structure, which is beneficial to all parties concerned, including the courts and society in general.

Statistics show that when structured settlement consultant attend mediations and other settlement forums, 75% of the cases settle with a settlement annuity compared to only 15% to 20% when a structured settlement consultant is not in attendance.

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