

## The benefits of using a structured settlement for an MSA:

- Structured Settlement consultant handles all the details and the work involved in setting up the MSA.
- Cost savings when annuitizing the MSA
- Reduces claim reserves
- Age ratings reduce premium if a traditional or NQ assignment is used.
- Contingent liabilities may be eliminated
- Reduces adjustment expenses by resolving claims more quickly which may include reduced attorney fees, investigation costs and medical costs which continue to rise
- Structured settlements are a great tool as claimants are used to period payments (weekly payments from WC)
- Multiple settlement designs available which allows structuring to meet present and future individual needs
- Conference calls to attorneys and claimants to help educate all parties on the process
- Annual benefits may be available to the beneficiary once all Medicare liens are satisfied – the left over trust funds go to the estate but Medicare requires a 6-month hold pending a Medicare review.
- Retention of Social Security benefits and Medicare

## Medicare Set-Asides on Workers' Compensation (WC) Claims

Workers' Compensation Insurance provides benefits to employees for personal injuries which occur on the job. Workers' Compensation (WC) covers medical care, payments, and overall expenses incurred when an employee is injured on the job.

Loss of income and surviving dependents' benefits can be converted into monthly payment annuities to best suit the needs of the injured person. A structured settlement is a unique way to provide for the injured employee's needs both today and in the future. Indemnity payouts, rehabilitation expenses, medical expenses, and surviving dependents' obligations can all be taken into account when designing the right structured settlement benefits for a WC situation. Structured settlements are particularly effective for:

- Long-term permanent disability cases (six years or older)
- Death claims with minor dependents
- To allow Social Security benefits to be paid
- When the majority of the settlement needs to be used for future medical care
- Where there is a compensability dispute

### What is the Medicare Secondary Payer Act (MSP)?

In 1980, Medicare was given a statutory right to be reimbursed for an injury victim's medical expenses AND a right to recover from the victim's future medical expenses before its secondary coverage applies. All parties in a WC case have significant responsibilities under the Medicare Secondary Payer (MSP) laws to protect Medicare's interests when resolving WC cases that include future medical expenses. The recommended method to protect Medicare's interests is a WC Medicare Set-aside (MSA), which allocates a portion of the WC settlement for future medical expenses. An MSA is an interest-bearing account either professionally-administered or self-administered, that holds the funds to pay for future medical and drug expenses that are related to an injury for which a WC claim has been filed. Structured Settlements have become a popular method of funding MSA's because of the reduced cost to the parties. Periodic payments in the form of a structured settlement can create a solution where none previously existed even when ongoing medicals and future lost wages are an issue.

The MSA process is the process by which future medicals are calculated and provided in the settlement to the claimant/plaintiff. During this process, the lien/conditional payments must be obtained and repaid and the claim reported. The amount of the set-aside is determined on a case-by-case basis and should be reviewed by CMS/Medicare. Once the CMS-determined set-aside amount is exhausted and accurately accounted for to CMS, Medicare will agree to pay primary for future Medicare covered expenses related to the WC injury.

### When is an MSA appropriate?

It is not in Medicare's best interest to review every WC settlement in order to protect Medicare's interests. A WC MSA is not necessary when resolution of the WC claim leaves the medical aspects of the claim open.

A WC MSA may be submitted to CMS/Medicare for review in the following situations:

- The claimant is currently a **Medicare beneficiary** and the total settlement amount is **greater than \$25,000; OR**
- The claimant has a "reasonable expectation" of Medicare enrollment **within 30 months of the settlement date** and the anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be **greater than \$250,000; OR**
- The claimant is already a Medicare beneficiary regardless of whether or not the total settlement amount exceeds \$250,000.



# Medicare Set-Asides on Workers' Compensation (WC) Claims

## IFS FAMILY COMPANY

SFA, the 3<sup>rd</sup> largest broker firm in the industry, is a member of Integrated Financial Settlements (IFS). The broker firm members of IFS make up 33% of the total industry.

## NATIONAL PRESENCE

SFA has more than 70 Structured Settlement Consultants with offices in every major metropolitan area of the United States.

## CONTACT INFORMATION

For more information on any of our products or services please contact:

[www.sfainc.com](http://www.sfainc.com)

MSA's are not obligatory for WC claims. MSA's are one of many methods to satisfy Medicare's requirement that future medical costs must be addressed for WC claims. When the CMS issued the July 23, 2001 ARA letter, it established review thresholds for WC cases settled by injured individuals who are not yet Medicare beneficiaries.

To the extent a WC settlement meets both of the criteria (i.e., the settlement is greater than \$250,000 AND the claimant is reasonably expected to become a Medicare beneficiary within 30 months of the settlement date), then a CMS-approved MSA is appropriate.

An individual has a "reasonable expectation" of Medicare enrollment if any of the following situations apply:

- The individual has applied for Social Security Disability (SSD) Benefits;
- The individual has been denied SSD Benefits but anticipates appealing that decision;
- The individual is in the process of appealing and/or re-filing for SSD Benefits;
- The individual is 62 years and 6 months old (i.e., may be eligible for Medicare based upon his/her age within 30 months); or
- The individual has an End Stage Renal Disease (ESRD) condition but does not yet qualify for Medicare based upon ESRD.

### **Computing MSAs: Usual & Customary vs. State Fee Schedules**

The total settlement amount includes, but is not limited to, wages, attorney fees, all future medical expenses (including prescription drugs), and repayment of any Medicare conditional payments. Also, any previously settled portion of the WC claim must be included in computing the total settlement amount.

The current CMS/Medicare Rules allow for the MSA allocation to be computed using the State's WC fee schedule OR usual and customary charges for the medical treatment. The state's fee schedule may reduce the amount of the Medicare allocation. However, it is important to note that the rules of CMS/Medicare indicate that any Medicare covered treatment for the work injury and/or illness in excess of the fee schedule may not be paid out of the MSA. Therefore, any excess payment due above the state fee scheduled rate for that treatment may be the responsibility of the claimant. It is strongly suggested that a statement be obtained from the claimant that this is understood by the claimant should a decision be made to use the state fee schedule to compute the MSA allocation.

### **Using a Structured Settlement can cut the cost of an MSA in half!**

Medicare allows for the structuring of the MSA which will reduce the present day "cost" of the MSA for settlement purposes. The structure will allow for the full value of the MSA to be spread over the claimant's life expectancy. A structured settlement consultant can help you to structure the MSA. Medicare determines the value of the annuity based on how much the annuity is expected to pay over the life of the settlement, not on the cost of funding that annuity.

There are certain rules regarding the way in which Medicare requires the structure for the MSA and a formula for computing the annual amount to be paid to the claimant and the "seed" money to start the MSA account:

1. The annuity must pay the claimant annually for at least their life expectancy. This annuity payment can start one year from the date of settlement. This structure can be a life time benefit, life contingent benefit, or term certain benefit.
2. The seed money and annual amount is determined by the following formula:
  - Total MSA
  - Subtract any surgery costs and first cost for any Durable Medical Equipment
  - Divide remainder by Life Expectancy minus one year (as set by Life Tables from Medicare)
  - Multiply the quotient by 2 and this is the annual amount required for the annuity
  - The seed money is the annual amount for the annuity PLUS the surgery cost and the first cost for any durable medical equipment.

