

# Complying with Medicare After Settlement

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This guide is brought to you by Milestone Consulting, a full-service settlement planning and management company. Led by John Bair, the Milestone team has helped thousands of families navigate the settlement process with confidence.

# Keeping Benefits with a Medicare Set aside

## Medicare Defined

Medicare is a government-provided health insurance program designed to assist certain people with hospital care, medical costs, and other expenses. Qualifying beneficiaries are people who are 65 or older, those younger than age 65 with certain disabilities, and people of all ages with permanent kidney failure.

## Complying with Medicare Using an MSA

A Medicare set aside (MSA) is an account created from a settlement of a workers' compensation case or a liability case (medical malpractice, auto accident, etc.).

The account is funded by using a portion of the settlement proceeds that were awarded to the claimant or plaintiff in order to pay for future medical expenses related to the injury or illness. Those expenses would otherwise be paid for by Medicare, but because Medicare is a "secondary payer," adequately complying with Medicare means a beneficiary's settlement must help cover those expenses.

There is a very specific set of steps beneficiaries must take to properly set up an MSA and comply with Medicare. Funds must be established in insured bank accounts, health care providers must be notified, and claims must be properly paid and recorded.

The claimant must decide whether to manage the account alone or set up the MSA in a custodial account. A custodial account is a financial account set up for the benefit of a beneficiary, and administered by a responsible person, known as a custodian.

Taking a streamlined, systematic approach to the MSA process will ensure beneficiaries set up their program properly and keep their Medicare eligibility. It can sound overwhelming, but it's very manageable, especially with the help of a seasoned professional.



## When Benefits & Settlement Collide

Settling a lawsuit can be a great relief to an individual and his or her family. While the money that can come as a result of settlement is usually welcome, the next step of the process is to make sure one educates themselves on the implications of these new funds, and how to best manage the money to set oneself up for success moving forward.

This guide aims to answer critical questions one may have about the relationship between a settlement and a Medicare set aside. The information in this e-book has been provided by a team of settlement planning experts with over ten years in the industry.





## How Much Money is needed to fund a Medicare Set aside?

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Many people ask us how to figure out how much money they need to put in their Medicare set aside. Every case is different, but in short, the following four factors determine the appropriate amount for an MSA:

- **The settlement recovery amount,**
- **The full value of your case if you went to trial or arbitration,**
- **The amount allocated to future medical care, and**
- **How much future Medicare-allowable medical treatment will be needed over your lifetime.**

An experienced settlement planner can assist claimants in determining how much money to set aside in their account.

It's important to mention here that MSAs are not mandatory. Some companies will aggressively market MSAs to unsuspecting people even when they're not necessary for those individuals.

At Milestone Consulting, our philosophy is to make sure each client is informed about their options. Our experts provide assistance with MSAs when they are the best step to take to ensure government compliance.

# Options to Fund a Medicare Set aside

There are different funding options for MSAs, including funding with a lump sum or utilizing a structured arrangement. A structured arrangement requires an initial deposit and regular deposits over a certain period of time. After those funds are exhausted, Medicare will kick in and be the primary payer for further injury-related expenses during that period.

There are two common types of structured arrangements that are ideal for funding MSAs: structured settlement annuities and single premium immediate annuities. Both options can create a considerable cost savings over funding with a lump sum.



## Option 1: Single Premium Immediate Annuity

The Single Premium Immediate Annuity (SPIA) is essentially a lump sum of money used to purchase an annuity from a life insurance company, who in exchange funds the MSA account. The payments are made annually over a specific period of time. The SPIA allows a little more time and flexibility than other options. Money can be paid from the defendant to the plaintiff, who is then able to purchase the annuity.

Although the SPIA does not offer the same tax-free advantages of a structured settlement annuity (see Option 3), many plaintiffs establishing an MSA find they have little or no tax liability because of low income bracket and the potential offset due to IRS Code Section 213(d) medical deductions.

## Option 2: Cash

Another benefit of a SPIA is that it offers living commutation: the ability to commute all or a portion of the annuity's present value during the beneficiary's lifetime. If the Centers for Medicare and Medicaid Services (CMS) changes any guidelines for MSAs, the plaintiff will not be locked into an immutable structured settlement annuity contract.



## Option 3: Structured Settlement Annuity

A structured settlement annuity (SSA) is a financial solution that allows the injured party a means of deferring part or all of the settlement, which provides significant tax advantages. Per the terms of the settlement agreement, the defense directly purchases an annuity from a life insurance company, which then uses the funds to replenish the MSA account for the plaintiff, plus interest, through a series of annual payments across a set period of time.

Both SSAs and SPIAs offer considerable cost and tax savings over using a lump sum to fund an MSA.

If an MSA is the right option, the plaintiff should choose to engage a settlement expert who can co-broker the annuity purchase with the defendant to ensure that the annuity pricing, product selection, and document process are performed within the best interest of the plaintiff.

# WCMSA vs. LMSA Arrangements

## What's the Difference?

There are two types of MSAs: liability Medicare set asides (LMSA) and workers' compensation Medicare set asides (WCMSA). There are a few differences between them. For example, Medicare cannot deny payment for WCMSAs, but it can deny payment for liability MSAs.

The Centers for Medicare and Medicaid Services' *WCMSA Reference Guide* provides an overview of WCMSAs and explains when they are necessary, how to fund them, and what the submission and approval process looks like. In the guide, CMS discusses two methods of funding WCMSAs: with a lump sum or a structured arrangement. Per the guide, "When a WCMSA is designated as a lump-sum commutation settlement, Medicare will not make any payments for the claimant's medical expenses (for work-related injuries or diseases) until all the funds within the MSA (including any interest earned on funds in the account) have been completely exhausted."

Note that the reference to "all the funds" means that until the entirety of the WCMSA allocation is exhausted, Medicare is not responsible for making any payments. For those claimants involved in workers' comp cases who need WCMSAs, funding with structured arrangements can allow them to retain more of their settlement recovery over the long-term.



## What Happens to a Medicare Set Aside if the Claimant Passes Away?

If the claimant has named a beneficiary on the Medicare set aside account and has passed away before the MSA proceeds are exhausted, the remaining money will go to that person – but only the amount of money already in the MSA as cash. If there is no named beneficiary, then these funds would pass in accordance with state intestacy statutes.

The majority of MSAs are set up with life-only annuities with no remainder interest to beneficiaries – a potential windfall to the insurance company who wrote the annuity, but not to the beneficiary.

Brokers often set up the cheapest annuities as a duty to the workers' compensation carrier. However, MSAs funded with cash can be passed onto a beneficiary of the account when the plaintiff passes.



# Can Medicare Deny Payment?

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Medicare can deny payment in certain situations. For example, Medicare can deny payment if part of the settlement was allocated to cover a future surgery, but no effort is made to protect Medicare as a secondary payer. Simply put, if the settling parties are contemplating future medical costs that would typically be covered by Medicare, an MSA might be advisable.

Medicare cannot deny payment for WCMSAs (See the section titled, "WCMSA vs. LMSA" in this ebook). On the other hand, if a client is Medicare eligible but no amount of the settlement is intended for future medical care, establishing an MSA is most likely not necessary. The same goes for settlements in which only past damages and wages are being recovered.

Each case is unique, which is why plaintiffs who are about to settle their workers compensation case or liability case should seek guidance early in the process to determine what, if anything, should be done to protect Medicare's interests.



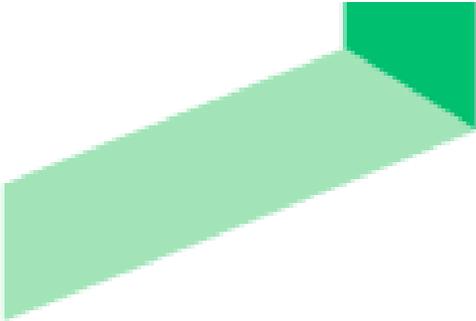


## Getting Professional Help With Medicare Compliance

Beneficiaries can either elect to self-administer Medicare set asides or retain a professional administration firm to handle the process. They can also connect with certain companies that charge a small fee for a self-administration guide.

The Medivest Medicare Set Aside Self-Administration Kit, for example, provides the resources needed to self-administer a Medicare set aside account and explains how to properly hold and disburse MSA funds.

The decision between self-administering or retaining professional assistance is one that should be made by consulting with an unbiased expert, such as your attorney.



# About

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## John Bair, CEO of Milestone



Since starting in the settlement management industry in 1999, John Bair has guided thousands of plaintiffs and their families through the transition from litigation to the eventual steps towards their future. His benevolent nature finds John involved in monumental cases, such as representing families of victims who were lost in the crash of Flight 3407. John was responsive to the tragedy of 9/11 and offered pro bono services to the families of the victims.

A passion for consumer protection resulted in John's involvement with the drafting and creation of federal and state legislation. He frequently advises attorneys on the complexities of closing a settlement, and is licensed in all 50 states.

John has earned multiple accreditations and achievements that speak of his commitment to providing plaintiffs and their families with the best representation. John is guided by his vision that every client is provided the Milestone safeguard for their legal, financial, and emotional well-being.

### Milestone Consulting

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Milestone Consulting, LLC is a settlement planning and management company. Our approach is comprehensive, but our focus is simple - your future. We have guided thousands of clients through the settlement process. By taking the time to understand the complexities of each case, assessing the best outcome, and finding the path that enables each client to manage their many needs, we secure your future.

The Seventh Amendment is the pillar of our justice system. Our forefathers enforced the right of the common man to level the playing field against the largest of corporations. This belief system is deeply ingrained in the fabric of our firm, and the preservation of this right is something to which we are wholly committed.



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