

**Criteria for Determining Whether a Lump Sum or Structured Settlement
Sufficiently Takes into Account Medicare's Interests**
(Ref: 7/23/01 Memo Q5)

The CMS considers whether the amount allocated for future medical expenses is reasonable. In addition, the repayment of conditional payments made by Medicare should be taken into account. Consequently, CMS considers the following criteria when reviewing Workers' Compensation Medicare Set-aside Arrangement (WCMSA):

1. Date of entitlement to Medicare.

2. Basis for Medicare entitlement [disability, End-stage Renal Disease (ESRD) or age] -- If the claimant has entitlement based on disability and would also be eligible on the basis of ESRD, this should be noted since the medical expenses would be higher. This would also be true for claimants who are over 65, but had been entitled prior to attaining that age.

3. Type and severity of the injury or illness-- Obtain diagnosis codes so injury or illness related expenses can be identified. Is full or partial recovery expected? What is the projected time frame if partial or full recovery is anticipated? As a result of the accident is the claimant an amputee, paraplegic or quadriplegic? Is the claimant's condition stable or is there a possibility of medical deterioration?

4. Age of the claimant-- Acquire an evaluation of whether his/her condition would shorten the life span.

5. Workers' Compensation (WC) classification of the claimant (e.g., permanent partial, permanent total disability, or a combination of both).

6. Prior medical expenses paid by WC due to the injury or illness in the one or two year period after the condition has stabilized—Any conditional payments made by Medicare must be recovered. Also, this would indicate that the case may not purely be a commutation case, but may also entail some compromise aspects, e.g., the WC carrier or agency may have taken the position that the services were not covered by WC.

7. Amount of the lump sum or structured settlement-- Obtain as much information as possible regarding the allocation between income replacement, loss of limb or function, and medical benefits.

8. Whether the commutation is for the claimant's lifetime or for a specific time period? If not for lifetime, please provide basis.

9. Whether the claimant is living at home, in a nursing home, or receiving assisted living care, etc. If the claimant is living in a nursing home, or receiving assisted living care, it should be determined who is expected to pay for such

care, e.g., WC (for life time or a specified period) from the medical benefits allocation of lump sum settlement, Medicaid, etc.

10. Whether the expected expenses for Medicare covered items and services are appropriate in light of the claimant's condition?-- Estimated medical expenses should include an amount for hospital and/or SNF care during the time period for the commutation of the WC benefit. (Just one hospital stay that is related to the accident could cost \$20,000). For example, a quadriplegic may develop decubitus ulcers requiring possible surgery, urinary tract infections, kidney stones, pneumonia and/or thrombophlebitis. Although each case must be evaluated on its own merits, it may be helpful to ascertain for comparison purposes the average annual amounts of Part A and Part B spending for a disabled person in the appropriate State of residence. Keep in mind that these Fee-for-Service amounts are for all Medicare covered services, while our focus here only deals with services related to the WC accident or illness. Therefore, the RO should use appropriate judgment and seek input from a medical consultant when determining whether the amount of the lump sum or structured settlement has sufficiently taken Medicare's interests into account.