# Top Medicare Set Aside FAQs

## Q: What is a Medicare Set-Aside Account?

*Simple Answer:* A Medicare Set Aside (MSA) account is a portion of money set aside from a settlement to cover all future injury-related medical expenses for the injured party that would normally be paid by Medicare. When the MSA account funds exhaust, Medicare will step in as primary payor granted the injured party has reported their use of the funds properly to Medicare and, of course, that they are enrolled in a Medicare plan.

*Technical Answer:* According to Medicare, a Medicare Set Aside (MSA) account is a portion of an injury settlement "set aside" for all future injury-related medical expenses that are covered and would normally be paid by Medicare. The goal of creating a MSA is to set aside money from the settlement to cover those injury-related medical expenses. The MSA is to be spent fully on those expenses prior to Medicare paying for them. While Medicare's rights to protection and recovery under Section XVIII of the Social Security Act apply to settlements of all types of personal injury insurance claims (workers compensation, liability and no-fault claims), so far Medicare has only provided specific definitions and guidelines for Workers Compensation Medicare Set-Aside Arrangements (WCMSA's). In general, parties settling cases refer to those WCMSA instructions, even for cases that are not workers compensation. Those definitions and guidelines may be found here.

In practice, a Medicare Set Aside is typically set up when an injured party settles their future medical benefits from an insurance claim and the injured party meets criteria that cause Medicare to request reporting on the future use of their medical settlement funds. Whether it is a workers' compensation, no-fault auto, or a liability case, an injured party can receive a certain amount of money from their settlement that is set aside for their future medical care related to their injury. Money that is designated to be spent on items that both

1) Medicare would otherwise cover and
2) that are related to the injury, are what is placed in the Medicare Set Aside account.

When funds in a Medicare Set Aside account are spent according to Medicare's guidelines and reporting is filed to Medicare properly, the injured party can expect that if the funds in the account ever exhaust, Medicare will step in to begin paying for injury-related treatments.

## Q: What is a Medical Cost Projection?

*Simple Answer:* A Medical Cost Projection (MCP) typically consists of funds allocated for future medical expenses, regardless of whether they would be covered or not by Medicare. An administrator can manage MCP accounts for all sorts of medical care. In many cases, an MSA will be established along with an MCP that is designed to pay for all the healthcare items the MSA does not cover. Unlike an MSA, if your MCP funds exhaust, Medicare does not step in as primary payor.

*Technical Answer:* A settlement agreement could also include a Medical Cost Projection (MCP), which consists of funds designated for medical expenses but that are for items that either Medicare would not cover or that are not related specifically to the injury. Sometimes these accounts are referred to as "Non-Qualified" medical expense accounts, meaning the medical expenses in this projection would not qualify to be covered by Medicare so that they are not in the MSA.

These accounts, when administered by a professional administrator, may also be referred to as Medical Custodial Accounts. This type of projection account does not carry reporting requirements to Medicare and has more freedom regarding treatments. One of the major differences is that with an MCP, if you exhaust, Medicare does not step in as the primary payor.

## Q: When do you need an MSA?

*Simple Answer:* An MSA is just an organized way to show Medicare that you took their interests into consideration at the time of settlement. An MSA is never required, but many parties to a settlement choose to specifically put together an allocation report showing items that are related to the injury and would be covered by Medicare. The report is called the MSA. MSA's can be submitted to Medicare for review and approval if they are significant to meet Medicare's review thresholds; in any event, the process of review and approval is voluntary. Getting approval just means Medicare has validated the amount set aside is accurate.

*Technical Answer*: Under Section XVIII of the Social Security Act, on any injury settlement, "Medicare's interests" must be taken into consideration. It is never required, but often parties to a settlement will choose to put together a medical allocation report that specifically lays out the costs that Medicare would cover and that are related to the injury in a MSA report.

Medicare has offered to review and approve the amounts of these allocation reports only when the injured party is Medicare eligible or will potentially be Medicare eligible in the next 30 months and the amounts are significant enough for review. While Medicare has offered to review significant cases, the review process is entirely voluntary. The thresholds for review are:

- The claimant is a Medicare beneficiary and the total settlement amount is greater than $25,000.00; 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 $250,000.00

An individual is eligible for Medicare after they turn 65 or they can be under the age of 65 but are receiving Social Security Disability Insurance (SSDI). There can also be exceptions to the rule in some settlement cases.

## Q: What are the main rules and regulations for the administration of MSA's?

*Simple Answer:* Injured parties:

- Are only allowed to spend their MSA funds on Medicare-covered treatments related to their injury.
- Must place MSA funds in a separate, interest-bearing bank account

- Must keep copies of bills & receipts
- Must report all expenses they used their MSA funds on to CMS each year and in the case their funds run out
- Must only pay the state fee schedule or "usual and customary" pricing for treatments & prescriptions

*Technical Answer:* There are a number of complex rules to follow in the administration of MSAs. These are detailed in CMS' WCMSA Reference Guide and its Self Administration Toolkit. An administrator, like Ametros, offers products to ensure your account is used and reported properly. CMS "highly recommends" the use of a professional administrator.

The most basic rule to keep in mind is that the injured party is only allowed to spend their MSA funds on Medicare-covered expenses directly related to their injury. Secondly, the injured party needs to keep track of all the expenses to report to Medicare that they used the funds properly. This is important so that, in the case the MSA funds run out, Medicare will agree to begin coverage for injury-related treatment. To provide more detail step by step: the MSA funds must be placed in a separate, interest-bearing bank account.

The injured party needs to keep copies of all bills and receipts, and keep detailed reporting on every expense they incurred with their MSA funds. This report must be sent to The Centers for Medicare and Medicaid (CMS) on a yearly basis in what is called an annual attestation. In addition, if the MSA funds run out, the injured party must file a temporary depletion form (if they will receive future MSA annuity payments), or permanent exhaustion form to CMS if they are permanently out of funds.

The injured party should only pay the state fee schedule or the"usual and customary" price for treatments and prescriptions, which many times can be difficult to calculate and request from providers. If the injured party pays above the fee schedule, they could potentially end up having to repay Medicare for the cost of treatment above and beyond the fee schedule.

Failure to report to Medicare and to use the MSA funds properly will result in Medicare denying to pay for treatments that are related to the injured party's injury thereby, jeopardizing their Medicare benefits. Regardless of whether the injured individual is currently on Medicare, it is essential that their use of MSA funds is properly reported to the government.

## Q: What happens when I exhaust my MSA money? Will Medicare pay?

*Simple answer*: When MSA funds are exhausted, Medicare will begin to pay for all covered items related to your injury, only if you have properly managed your MSA funds and reported your spending to Medicare, and if you are enrolled as a beneficiary on Medicare. If Medicare steps in to begin covering you for treatments related to your injury, you will be covered just like any other Medicare beneficiary and subject to corresponding co-pays, coinsurance and deductibles.

*Technical Answer:* If your MSA funds run out and

1) the funds were exhausted properly according to Medicare's guidelines, and
2) you reported your use of the funds properly,

then Medicare would step in as the primary payor for your future medical expenses related to the specific injury. If Medicare steps in to begin covering you for treatments related to your injury, you will be covered just like any other Medicare beneficiary and subject to corresponding co-pays, coinsurance and deductibles.

Medicare will only pay if the injured party has previously enrolled in Medicare during an enrollment period, or have managed their MSA correctly (rules and regulations stated below). If someone is not properly spending their MSA funds or not reporting properly, they are jeopardizing their future Medicare benefits for injury-related care. Medicare states it will deny paying for treatments if it cannot track the proper use and exhaustion of the MSA funds.

If care is denied, the injured party will need to replenish its MSA account for items that were unaccounted for so that it can correct its reporting to Medicare. The injured party should also consider contacting a professional administrator for help.

## Q: Is getting an official MSA report from a third-party vendor required?

*Technical Answer*: No. An attorney or adjuster or other party can come up with the amount that should be set aside. Many parties to settlement elect to use a third-party vendor due to their expertise in following Medicare's guidelines for how to come up with the amount and the fact that they are an independent party. Medicare has provided extensive guidelines on how to create a MSA.

## Q: Is getting the MSA reviewed and approved by Medicare required?

*Technical Answer:* No. Medicare has offered a voluntary submission and review process for MSAs that meet its thresholds. For MSAs that do not meet the review thresholds, Medicare will not even review them. For MSAs that do meet the review thresholds, the parties to the settlement can decide if they would like to submit the report to Medicare so that Medicare can review and approve the amount. The benefit to having the MSA reviewed and approved is that Medicare has deemed it sufficient to cover its "interests" in the case that the funds may exhaust in the future. If the MSA is never reviewed and approved, Medicare has never deemed it sufficient and so there is still some level of uncertainty over if Medicare will accept the amount as sufficient.

## Q: What if my MSA was never reviewed and approved by Medicare?

*Technical Answer:* Many MSA's cannot be reviewed and approved by Medicare because they are below the thresholds for review. Sometimes, parties to a settlement choose not to submit even large MSA's to Medicare for review. The review and approval process is voluntary. As long as the amount set aside is reasonable as to be deemed sufficient by Medicare and the reporting is done accurately, then Medicare will step in to become the primary payer if the MSA funds run out.

## Q: Is getting an annuity for my MSA required?

*Technical Answer:* No. However, many parties to a settlement recommend annuities as a way to provide the injured party with security of future payments. Medicare does allow for MSAs to be annuitized and will review and approve the seed amount (initial funding provided to the injured party) and annual payment amounts.

If the MSA submitted to Medicare is approved as a lump sum, then it cannot be changed to an annuity unless it is re-submitted for approval. On the other hand, if the MSA is approved as an annuity, the parties to a settlement can decide to change to a lump sum without notifying Medicare.

## Q: What can I use my MSA account on?

*Technical Answer:* The injured party can use their MSA funds on Medicare-approved expenses related to their injury. This can include doctor bills, prescriptions, durable medical equipment, home healthcare, and more. The injured party cannot use their MSA funds for anything other than these expenses.

## Q: Are my MSA funds taxed?

*Technical Answer:* In most cases, the entire amount paid out in a personal physical injury settlement is non-taxable. So, your MSA funds, as part of that settlement are also not taxed upon receipt.

The injured party is responsible for taxes on interest earned on their MSA funds. If the interest earned is accrued over $10, typically the bank will provide the injured party a 1099-INT to use in their tax filings. Interest income taxes can be paid for out of the MSA account per Medicare's guidelines.

## Q: What happens if I don't properly manage my MSA account?

*Simple Answer:* If you do not properly manage your MSA account, you could severely jeopardize Medicare paying for your future medical care. Consequences include: denial of future bills from Medicare if your funds exhaust and being required to repay your MSA account for expenses that were paid for that are not covered by Medicare. Medicare reserves the right to have reporting for up to the entire settlement amount on medicare covered treatments before Medicare agrees to begin covering injury-related bills.

*Technical Answer:* If the injured party doesn't properly manage their MSA account, Medicare will deny paying for their injury-related treatment until the reporting is corrected. To do so, the injured party will have to pay back any amount that was used on an improper expense not relating to their injury back into the MSA account.

Mismanaging the MSA account will jeopardize the injured party's future Medicare benefits; for this reason, it's important to be careful and seek assistance. Medicare "highly recommends" the use of a professional administrator.

## Q: How Ametros can help

*Technical Answer:* Ametros' service, CareGuard, helps individuals manage and make the most of their settlement funds. CareGuard is a full professional administration service, where we take care of everything for the injured party. The MSA funds are placed in an interest-bearing account under the injured party's name, and we act as the custodian of the account.

The injured party receives a CareGuard card that works like a traditional insurance card, and by showing it at doctors or pharmacies, it automatically ensures that the injured party will receive maximum discounts through our group purchasing discounts, and all the bills will be sent to us. We pay all the bills on behalf of the injured party and ensure 100% compliance with Medicare by completing all required reporting.

With CareGuard, the injured party can treat with any doctor or pharmacy that they would like to without undergoing any utilization review. In addition, CareGuard has a team of Care Advocates that provide the injured parties with 24/7 support to help coordinate their care.

## Q: Why is professional administration recommended for an MSA?

*Simple Answer:* The Centers for Medicare & Medicaid (CMS) highly recommends including professional administration in the case of an MSA. Professional Administration can help take the burden off the injured party when it comes to reporting to CMS, tracking funds, and managing funds.

*Technical Answer:* The Centers for Medicare and Medicaid (CMS) updated their Workers' Compensation Medicare Set-Aside (WCMSA) Reference guide in July of 2017 to include professional administration in Section 17.1. It now states, "It is highly recommended that settlement recipients consider the use of a professional administrator for their funds." MSA professional administration is recommended because, as stated above, there are many rules and regulations that go into administering a Medicare Set Aside account, and it is very easy for an injured party to risk their Medicare benefits by mismanaging their account.
At Ametros, our goal is to create a seamless process for the injured party to protect their Medicare benefits once they settle their case with our professional administration service, CareGuard. With CareGuard, the injured party doesn't have to ever touch a bill, or worry if they are keeping up to date with their Medicare reporting. The injured party will always have their Medicare benefits intact when they choose to settle with CareGuard.

## Q: What if I want to self-administer my MSA?

*Technical Answer:* Injured parties can elect to administer their own MSA. This is NOT what Medicare recommends. However, there is a 31-page Self Administration Toolkit available and the injured party should also become familiar with the WCMSA Reference Guide as well as the Federal Medicare Secondary Payer Act, 42, U.S.C. §1395 et seq, as amended from time to time.

Ametros' Amethyst service is designed to help individual self-administer with support. It helps the injured party maximize their medical funds, but instead links to the injured party's own personal bank account. The injured party receives the Amethyst card that works the same as a traditional insurance card. This way the injured party will always remain in control of their settlement funds, but they are still receiving our help, support, and savings as they would with CareGuard.