



**PROPER PLANNING MAY CREATE PEACE OF MIND**



**October 2006**

**MEDICARE SET ASIDE TRUSTS IN LIABILITY CASES:  
IT'S NOT JUST FOR WORKER'S COMPENSATION CASES**

**T**rial attorneys should be aware that the Center for Medicare & Medicaid Services is taking the position that where a settlement under a liability insurance policy compensates the injured plaintiff for future medical expenses, it will not issue payment until that portion of the settlement has been applied toward the plaintiff's medical expenses that would otherwise be covered by Medicare. Under 42 U.S.C. 1395y(b)(2)(A) Medicare is the secondary payor when an injured individual receives worker's compensation proceeds or, proceeds from a liability policy. If Medicare pays expenses erroneously, they are subject to reimbursement (interest can be charged if not repaid within the established time). Since about 1998 CMS has been enforcing its rights against worker's compensation recoveries where the amount involved is greater than \$250,000.00. Please review the CMS website for guidelines on set-aside arrangements or 'Medicare Set Aside trusts' (MSA). Now, CMS is beginning to enforce its rights against plaintiffs receiving liability insurance proceeds where:

1. the amount involved is greater than \$250,000.00; and the plaintiff is receiving Medicare or, is

expected to receive Medicare in the next thirty months.

***The Tale:*** A young man riding a motorcycle is brain injured when he is struck by an automobile. He unable to return to work, and receives Social Security Disability benefits. After two years of SSDI benefits he will be eligible to receive Medicare. His personal injury lawsuit is settled for the full policy limits which is several million dollars. While the settlement is less than his total damages it does include payment for future medical expenses.

***The Tip:*** If you have a case where the facts meet the conditions discussed above, advise your client that their future Medicare benefits could be at risk if they don't set aside funds representing the value of future Medicare covered expenses. A responsible trustee will need to be selected to administer the trust, pay bills that would otherwise be covered by Medicare, keep accounting records, and notify the fiscal intermediary when the funds are exhausted. An expert should be hired to review the life care plan/economic report and determine the amount that should fund the MSA.

***"CMS is beginning to enforce its rights as secondary payor against plaintiffs receiving liability insurance proceeds . . ."***

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"The superior man is modest in his speech, but exceeds in his actions"

—Confucius

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- ◆ Revocable Trust
- ◆ Durable Power of Attorney
- ◆ Designation of Healthcare Surrogate
- ◆ Quit Claim Deed
- ◆ Living Will

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- ◆ Long Term Care Facility Residents' Rights
- ◆ Medicaid Applications & Appeals

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- ◆ Special Needs Trusts
- ◆ Representation of Special Needs Trust's Trustees
- ◆ Protecting Lawsuit Proceeds and Inheritances While Preserving Medicaid and SSI Eligibility
- ◆ Exceptions to Medicaid Lien Recovery