

MEDICARE SET ASIDE DISCLOSURE FORM

I, _____, have been advised by my attorney, _____, that

- The Medicare Secondary Payor regulations say Medicare is always secondary to workers' comp and other insurance, including no-fault and liability insurance. Under the Social Security Act, payment "may not be made under Medicare for covered items or services to the extent that payment has been made, or can reasonably be expected to be made promptly, under a liability insurance policy or plan.
- While Medicare's authority to scrutinize liability settlements/judgments arises under the same statute as its authority to scrutinize workers' comp settlements/judgments does, currently no formal set-aside process exists for liability settlements/judgments. It currently is an "honor system", based upon standards of "good faith" and "reasonable person".
- Medicare will not pay for any medical expenses related to the injury after settlement until any portion of the settlement/judgment that is allocated to future medical expenses covered by Medicare has been fully exhausted. While such allocation is common in workers' compensation cases, allocation may or may not be part of a liability settlement/judgment.
- If any portion of the settlement/judgment has been allocated to future medical expenses, some portion of the settlement/judgment may need to be set aside into an account as an adequate representation of Medicare's interest in my future cost of care.
- A Medicare set-aside allocation amount is determined through the detailed analysis of each particular case. Once this "set aside" amount is exhausted, Medicare becomes the primary payor of Medicare covered expenses for those settlement-related injuries or judgment-related injuries.
- If an allocation of damages (to future medical expenses) is part of my settlement/judgment, Medicare's future interest is properly considered by generating an injury-specific estimate of the future course (and cost) of treatment. Further protection is available if I were to obtain approval from the Centers for Medicare & Medicaid Services ("CMS") of the proposed set-aside value. Only when these funds have been exhausted will I be able to utilize my Medicare card for all healthcare-related needs.
- If, in good faith, a reasonable person would surmise that an allocation to future medical expenses is part of my liability settlement/judgment, two options exist: i) identify the appropriate allocation and ensure that those proceeds are spent down on future injury-related care (for which Medicare would otherwise pay); or ii) contact the appropriate Medicare regional

office, share the fact pattern of the case and see if it would like to review and approve the allocation.

- Although CMS approval of the set-aside calculation is not mandatory, it helps avoid problems with future Medicare coverage. It also ensures that only a predefined portion of my settlement/judgment, rather than the entire settlement/judgment, must be spent before Medicare takes over payment again. I understand that seeking and receiving CMS approval of the set aside amount is the only way to guarantee that Medicare's future interests and my future Medicare benefits have been fully protected.
- Set-aside money must be used only for *injury-specific medical expenses*, which *Medicare would have paid*. Compliance with *all* Medicare rules and regulations is mandatory, including showing Medicare that money in the set aside account was spent properly. I can opt to either self-administer my own set-aside funds or may purchase a plan through a Medicare set-aside administration company to ensure that my funds are properly spent and disbursed. If I choose to self-administer the funds, it is my obligation to ensure that the funds are used properly. Improper administration of the funds could result in the loss of my Medicare eligibility.
- If a Medicare Set-Aside is necessary, I, or my custodian, must keep and submit, upon request or at year-end to CMS, all of the medical bills and receipts associated with the payment of injury-related, Medicare-covered medical expenses.
- Medicare Set-Aside funds only may be used to pay for pharmaceuticals upon the condition that the CMS/Medicare set-aside proposal accounted for such expenses; otherwise, no CMS/Medicare set-aside funds may be used for the purchase of medications of any kind.

CLAIMANT

DATE

STATE OF _____, COUNTY OF _____

Subscribed, sworn to and acknowledged before me by
_____, the Claimant, this ____ day of _____, 2011.

NOTARY PUBLIC

My Commission Expires: _____