

MSP FUTURE MEDICALS DISCLOSURE FORM

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

- The Medicare Secondary Payor (“MSP”) 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.”**
- Medicare will not pay for any medical expenses related to the injury after settlement until any portion of the settlement/judgment that is compensating me for future medical expenses covered by Medicare has been fully exhausted. While such compensation is common in workers’ compensation cases, compensation may or may not be part of a liability settlement/judgment.
- If any portion of the settlement/judgment compensates me for future medical expenses (the “Future Medical Dollars”), those Future Medical Dollars should be spent to pay for my future cost of care.
- Medicare cannot be billed for my future injury-related medical expenses until those Future Medical Dollars have been spent down and exhausted.
- Once those Future Medical Dollars have been calculated (by the creation of an “Allocation Study or Report”), one popular vehicle to ensure those Future Medical Dollars are spent down and exhausted appropriately involves funding a Medicare Set-aside Account (“MSA”). An MSA is one method by which to ensure that Medicare is not billed prematurely. Once this MSA amount is exhausted, Medicare becomes the primary payor of Medicare covered expenses for those settlement-related injuries or judgment-related injuries.
- If Future Medical Dollars are part of my settlement/judgment, I cannot bill Medicare for those same medical items/services/expenses until those Future Medical Dollars are spent down appropriately. Further protection is available if I were to obtain approval from the Centers for Medicare & Medicaid Services (“CMS”) of the proposed Future Medical Dollar value. **(Currently, CMS is not reviewing or approving Liability MSA Allocation Reports.)** Only when these funds have been exhausted will I be able to utilize my Medicare card for all healthcare-related needs, even those directly related to my injuries or conditions that are the subject of my settlement or judgment.
- If Future Medical Dollars are part of my settlement/judgment, two options exist:
i) identify the appropriate amount 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 office, share the fact pattern of the case and see if it would like to review and approve the allocation. (Currently, CMS is not reviewing/approving recommended allocation accounts.)

- Although CMS approval of the Future Medical Dollar amount 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 Future Medical Dollar amount is the only way to guarantee that Medicare's future interests and my future Medicare benefits have been fully protected.
- Future Medical Dollars 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 the Future Medical Dollars were spent properly.
- If I choose to fund Future Medical Dollars into an MSA, I can opt to either self-administer the MSA or may purchase a plan through an MSA administration company to ensure that my Future Medical Dollars are properly spent and disbursed. If I choose to self-administer the MSA, it is my obligation to ensure that the Future Medical Dollars are used properly. Improper administration of the funds could result in the loss of my Medicare eligibility.
- Instead of funding an MSA with my Future Medical Dollars, I understand I could also place my Future Medical Dollars into a medical payment account and use that account to pay for my future injury-related care otherwise covered by Medicare until those Future Medical Dollars are spent down and exhausted.
- Instead of funding an MSA or funding a medical payment account, I could also use my Future Medical Dollars to purchase a private health insurance plan or similar insurance plan with the specific purpose to pay for my future injury-related care (the "Future Medical Insurance Policy"). If I choose this option, I understand that I should use my Future Medical Dollars to pay the copays and premiums associated with the Future Medical Insurance Policy. I understand that I cannot bill Medicare for my future injury-related care until the Future Medical Dollars have been spent down and exhausted appropriately.
- No matter which option I choose, I understand that I, or my custodian, must keep and submit to CMS, upon request, all the medical bills and receipts associated with the payment of injury-related, Medicare-covered medical expenses from my Future Medical Dollars.
- Ultimately, it is my responsibility to ensure that Medicare is not billed prematurely for my future injury-related medical expenses for which I received compensation for those same expenses within my settlement/judgment.

- I agree that I have been fully advised of the ramifications and repercussions if I do not spend my Future Medical Dollars properly and agree that my attorney shall have no additional responsibilities related to my Future Medical Dollars.

MY DECISIONS:

- I request that my attorney consult (at no cost) with both medical and legal Medicare experts in order to obtain a recommended course of action to minimize the impact Medicare will have on my settlement.
- If the experts recommend, then I would like an Allocation Study/Report prepared that will identify the total amount of my future "Medicare-covered" medical expenses.
- If additionally, or alternatively, the experts recommend that I seek a legal opinion to identify my total potential liability to Medicare for future treatment expenses, I authorize my attorney to engage that attorney and pay the retainer fee.
- I would like to know the cost and benefits for professional administration of any MSA account that might be established, versus self-administration of an MSA account I might voluntarily choose to create and fund.
- I would like more information on the cost and benefits of a Medical Payment Account, and whether that is an option for me.
- I would like more information on the cost and benefits of using private health insurance or a similar plan to pay Medicare-covered medical expenses, and whether that is an option for me.
- I understand that I have a legal obligation to consider Medicare's interest regarding not billing Medicare for my future medical treatment that pertains to my injury settlement. I will be solely responsible from this date forward for appropriate payment of my future Medicare-allowable treatments and/or services. I do not require the help of my attorney or a Medicare lawyer or other expert.

CLAIMANT SIGNATURE

DATE