Structured Set-Aside Arrangements

(Ref: 4/21/03 Memo Q10 & 10/15/04 Memo Q5)

A WC Medicare Set-aside Arrangement can be established as a structured arrangement, where payments are made to the arrangement on a defined schedule to cover expenses projected for future years. In a structured Medicare set-aside arrangement, monies are apportioned over fixed or definite periods of time. In such cases, Medicare will not agree to cover the beneficiary if there is no verification that the funds apportioned in the arrangement have been exhausted. Medicare does not make any payments until the contractor responsible for monitoring the individual's case can verify that the funds apportioned to the period, including any carry-forward amount, have been completely exhausted as set forth in the Medicare set-aside arrangement.

However, CMS will approve a payout amount for services that would otherwise be reimbursable by Medicare from the WC Medicare Set-aside Arrangement in the following manner:

(1) The seed money for the WC Medicare Set-aside Arrangement must include an amount equal to the amount of monies calculated to cover the first surgery procedure and/or replacement and two years of annual payments.

(2) The remainder of the approved amount should be divided by the remainder of the claimant’s life expectancy (or a shorter defined period of time if CMS has agreed to a shorter time period).

(3) Subsequent annual deposits into the WC Medicare Set-aside Arrangement are to be based upon a set “anniversary date” which cannot be more than one year after the settlement date.

In a structured Medicare set-aside arrangement, if funds are not exhausted during a given period, then the excess funds must be carried forward to the next period. The threshold after which Medicare would begin to pay claims related to the injury would then be increased in any subsequent period by the amount of the carry-forward.

Example: A structured set-aside is designed to pay $20,000 per year over the next 10 years for an individual’s Medicare covered services. Medicare would begin paying covered expenses in any given year after this $20,000 is exhausted. However, in 2003 the injured individual needs only $15,000 to cover all related expenses. The administrator would need to carry-forward the excess $5,000 into 2004. Therefore, in 2004 a total of $25,000 of Medicare covered expenses would need to be spent for services otherwise reimbursable by Medicare before Medicare would begin to cover WC related expenses, but only for the balance of 2004. This carry-forward process continues until the accumulated carry-forward plus the payment for a given year is exhausted.

Please note that any structured set-aside arrangement agreed to by the parties will not be approved by Medicare if the settlement has not adequately considered Medicare’s interests.