Providing for future care through medical management

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What happens to your client after disbursement of settlement funds or judgment proceeds? If the case involved future medical needs, how will your client preserve capital to cover those costs? Will the client have to pay top-line medical costs as a "cash" patient?

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For some time, our brethren who handle workers' compensation cases have become familiar with the use of third-party medical management to receive and administer funds advanced by the carrier in exchange for a release of its obligation to provide future medical care. Based on experience acquired in three very recent cases, I have come to appreciate how this same service can aid in the process of settling tort cases involving ongoing medical needs.

A heavy plug that was expelled from a catalytic tube during a pressure test at an industrial plant turnaround struck John Doe violently in the face. In addition to multiple facial fractures, John suffered a marked traumatic brain injury that left him severely impaired. A medical savings account (MSA) analysis determined that roughly $600,000 was required for Doe's future medical needs.

Through the guidance of the attorney who performed the MSA workup and with the wise advice of a structure specialist, it was determined that the MSA could be funded with up-front cash of $50,000 and a structure costing roughly $325,000, thus preserving $275,000 of Doe's cash.

But what happens to the money that goes into the MSA? When MSAs first became an issue in injury cases, MSA specialists advised plaintiffs' counsel that we should insist on a self-administered MSA. That sounds good in theory, but how can Doe (in this case Doe's wife as Doe was so cognitively impaired that he had no such ability) know what expenses can and cannot properly come out of the MSA?

Added to this dilemma was the associated chore of documenting bills to correlate with expenditures in the event of a CMS audit once medical costs are presented to Medicare. Thankfully, we were guided to explore for Doe the prospect of medical management.

In the process, we found a medical management company* that could provide the service for the life of the MSA for a one-time $2,000 setup fee. (Note that in some instances, insurers have contracts with these providers that can reduce the setup fee.)

The best benefit of medical management came to light as we discussed the available services: The client receives a medical card that he or she presents to medical providers at the time of service. Not only does the management company then pay for the care, but it also secures a cost write-down of as much as 50 percent. Thus, the client's MSA can provide the client with much more bang for the MSA buck.

As part of our due diligence, we confirmed with our medical management provider that the funds it receives go into a separate account with a federally insured bank for the benefit of the injured client. As such, the $250,000 Federal Deposit Insurance Corporation (FDIC) protection is in place for each account.

Wise counsel should employ a structure to periodically fund any account ultimately requiring more than $250,000. However, the CEO of the company we used said his company can and would agree to assist in establishing a fund to create a separate account in a second bank if the first account's

balance exceeded the FDIC protection for the client.

Before discussing use of medical management in non-MSA situations, a few observations may be useful. First, if you determine that medical management for your MSA is appropriate, have the analyst working up the MSA consult with the medical management company.

If medical management can reduce the cost of care, that fact should be considered in potentially reducing the amount of money required to fund the MSA.

Second, if the client is eligible for health insurance (whether through a family member's plan or through the Affordable Care Act, so long as it exists), the health insurance premiums can be paid from the MSA. Additionally, if health insurance is used to pay for some of the related medical costs, the payment by the health insurer should offset dollar for dollar the client's obligation through the MSA.

Third, in follow-up to the foregoing, always speak to your MSA analyst to secure guidance on the front end so that the client can terminate the MSA if his or her medical needs abate or if there are residual funds in the MSA after exhausting the pre-determined amount required to protect Medicare. The MSA should be created so that those residual funds can revert to the client.

As we know, some compensation carriers require submission of a proposed MSA to CMS. While far beyond the intended scope of this brief article, John Cattie, my go-to MSA specialist, advised me that there is no legal requirement that any proposed MSA be submitted to CMS. Some carriers insist on this procedure while others do not.

If, however, the MSA has been submitted to and approved by CMS, the person or entity administering the MSA must submit an annual accounting to CMS. If professional management of the MSA is obtained, the fund manager will provide the required accounting.

Randy Roe worked for a temporary labor company and was dispatched to work for a stevedore in the New Orleans area. While preparing to begin shoveling the remnants of bulk cargo into the bucket of a front loader (like a large bobcat), the foot of the stevedore's direct employee/operator slipped off the brake and Roe's legs were crushed against the wall of the hold.

As Randy approached maximum medical improvement, the LHWCA carrier, which had a contractual subrogation waiver, saw a strong borrowed-servant defense to our maritime tort claim and sought mediation to resolve Roe's LHWCA claim.

In advance of the mediation, the carrier secured an outside analysis of Roe's future care, which priced-out at $77,000. We resolved the LHWCA claim at mediation for a confidential sum for indemnity plus the payment of that $77,000 for Roe's future medical.

As a condition of the settlement, we secured the carrier's agreement to pay for third-party medical management. We also included in the agreement that, at the end of seven years, any funds remaining in the medical fund would be paid to Roe.

Consequently, Roe obtained the benefit of a fund that would cover his medical needs. Because of anticipated contractual write-offs on medical charges, the real cost of Roe's care should be a fraction of the money in his medical fund, which means that he should have an additional source of funds in the future.

Once the LHWCA settlement was complete, Roe's future was made far more secure as we successfully pushed back against the stevedore's borrowed-servant defense and achieved a very fair settlement of his tort claim.

We are currently wrapping up the case of Mike Coe, a crane mechanic employed by a crane repair contractor, who was hurt on an Outer Continental Shelf platform due to the alleged fault of a platform-based crane operator. Discovery disclosed substantial employer fault, which made the tort claim a long shot. A global settlement was reached that included an 8(i) LHWCA settlement.

Based on the future medical projection secured by the comp carrier, $100,000 was placed with a medical management provider at the carrier's cost ($1,300). Because our client advised that he secured a job that would provide health insurance, we were able to include in the medical management agreement a provision giving him the option to terminate the fund after three years at his sole discretion with any unused funds going to him.

Medical management can and should be considered any time an MSA is created. Similarly, to enhance the prospect for approval of settlement of longshore or state comp claims involving funds for future medical needs, the use of medical management should satisfy the reviewing official that the employee's medical needs are being properly safeguarded.

Although our office has not had the occasion to employ medical management for a special needs trust, the medical management company we use advises that it works closely with attorneys who create special needs trusts to ensure proper fund usage; additionally, it can assist in the creation of the trust itself, if needed.

I also spoke to Alan Heisser at Heisser Financial Services/Millennium Settlements, Inc., which is a participant in the Friends of LAJ program, and he told me he routinely works with the medical management company we are using to help attorneys protect the future of their clients long after their cases settle.

*Ametros, *https://www.ametroscards.com/about-ametros/*