



The Affordable Care Act and Personal Injury Awards

SNA President [Marielle F. Hazen, CELA](#) recently spoke on the “Impact of the Affordable Care Act (ACA) on SNT and Settlement Planning” to an audience of 200 at the 2014 annual meeting of National Structured Settlements Trade Association. After providing a quick overview of the ACA, she focused on its potential effect on personal injury settlements.

Size of Settlements in Question

Given that ACA requires that all U.S. citizens have health insurance and, through Health Exchange-based insurers, significantly expands covered services, the size of future personal injury settlements in some states could be in question. In many states, a long-observed principle known as the “Collateral Source Rule” has held that personal injury damages should not be reduced in proportion to payments from other sources. But other states have repealed or modified that rule. Since ACA has eliminated annual or lifetime dollar limits for coverage and mandates the inclusion of rehabilitation, habilitation and mental health services, defendants in some states might argue that damages for future care expenses should be limited to the cost of insurance premiums, co-pays and deductibles.

Hazen pointed out, however, that coverage gaps remain. ACA does not address long-term care or home- and community-based support for activities of daily living, such as feeding, dressing and bathing. It also allows insurers to place a limit on the number of treatments or visits. Depending upon the plaintiff’s situation, such costs could factor into settlement negotiations.

Another question concerns whether or not insurers will be able to make claims against personal injury settlements for the reimbursement of expenses they have already covered on behalf of a plaintiff. It does not appear that the legislation requires portions of a settlement be “set aside” to compensate insurers for *future* expenses.

Role of Special Needs Trusts

In addition, the role of SNTs may shift. They may be unnecessary for individuals whose needs are adequately met by medical insurance. If, however, they will require Supplemental Security Income (SSI) or such Medicaid benefits as long-term care, residential support or employment assistance, [an SNT will be needed to ensure that assets intended for their support](#) do not render them ineligible for publicly funded programs.

Even when beneficiaries won't require public benefits, they may need professional money management and protection from financial predators, in which case, a settlement preservation trust should be considered.

Complex Questions

With passage of the ACA, involving special needs attorneys early in the settlement process has become even more important. They can help personal injury attorneys shape trial strategies, then determine whether or not an SNT should be created to hold settlement funds. They can further assist structured settlement brokers in evaluating the apportionment of awards and integrating structured payments with SNTs. And they can advise trustees on how to manage SNT distributions so that beneficiaries will not be disqualified for public benefits.

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