

What to do when the Affordable Care Act (ACA) Impacts Case Settlements:

The Benefits of an Accessibility-Focused Case Evaluation

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The ACA Insurance Mandates may Impact Long-Term Medical Cost Considerations as part of a Financial Settlement Strategy

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Introduction

The Sierra Group, Inc. (Sierra) provides integrated case management for those clients that want to advance independence, create a safe home environment, or achieve personal objectives, when age, disability, or injury has presented an obstacle. Creating a clear goal that allows for relevant reporting is our vanguard. Once established, we can leverage the resources available in our complex medical, educational, entitlement, and insurance systems to advance case objectives while also developing contingencies for the unpredictable events and changes that so often occur on our shared landscape.

Key Concept:

One of the likely unintended consequences of the Affordable Care Act (ACA) is that Special Need Trusts (SNT's) may be impacted due to settlement criteria that can be based on past, present, and future medical needs.

A recent article in the Journal of Forensic Economics offers that the individual insurance mandates of the ACA will provide those seeking settlements the opportunity to receive part (or all) of their health care needs through their insurance provider with the maximum out of pocket expenditure capped at \$6,250 per year ([Joshua Congdon-Hohman and Victor Matheson \(2013\) Potential Effects of the Affordable Care Act on the Award of Life Care Expenses. Journal of Forensic Economics: September 2013, Vol. 24, No. 2, pp. 153-160.](#)

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What can we call out on this page?

While those involved with Life Care Planning need to examine the impact of what is considered a covered insurance expense (during settlement negotiations or litigation) the role of accommodations and adaptive technology under the auspices of the new amendments to the Americans with Disabilities Act Amendments Act (ADAAA) and other Federal Civil Right and Educational Statutes may offer the potential for new areas of economic impact from which it may be possible to pursue equitable settlements; that can support the long-term care of an individual seeking relief.

Asking New Questions:

While there are many factors that coalesce to form a litigation or settlement strategy, it is reasonable to look to four general factors that can influence the size of a potential settlement. The chart noted on page three is intended to look at each of the possible criteria and then expand that criteria to include potential questions and considerations that may be present - based on a vantage point of accommodation or adaptation.

These, are viewed through disability, accessibility, and universal design filters such as the ADAAA and through other educational and social integration factors that may be also present (such as Department of Education IDEA and IEP overlaps).

In general, the potential impact of the ACA may allow for an expansion of supports that allow for a victims maximum accessible and independent integration into the community, school, post-secondary educational, vocational, and recreational settings. All of these life-settings have underlying and supportive affirmative legislative language that defines, supports, and mandates user access.

It is in seeking to answer these questions that the potential for settlement mitigation due to the ACA can be countered through the development of a broader set of expert opinions about the nature and long-term aspects of a particular case.

Conventional Factors To Consider in a Settlement Strategy

Amplification of the Same Factor Based on Attaining Maximum Accessible and Independent Integration (community, school, post-secondary, vocational, and recreational settings)

Past, Present, and Anticipated Future Medical Expenses

Do they include costs for Occupational and Physical Therapy needs?

What about costs for shifting orthodontics, vision, visual tracking, or visual perception training needs? Including how they may shift over a lifetime?

Costs for upgrades to wheelchairs, augmentative communication systems, and home environmental control systems? And the related costs, to provide training, support, and maintenance for these items?

What about speech language pathology interventions, cognitive, emotional, family therapeutic benefits and other counseling needs?

Are medical transport, advocacy, and case management needs included?

Are school and work related impairment expenses included (see IRS Tax Code for Impairment Related Work Expenses)?

Pain and Suffering

Are costs associated with impacts needed to overcome social isolation or social stigmas calculated?

Are costs needed to replicate or develop alternative social and personal networks established?

Are costs for potential concerns about relational and sexual development (and potential implications) considered?

Out-of-Pocket Expenses

Are costs accounted for that address hardware, adaptive hardware, transport, training, home modification, and moving/relocation costs included; especially as they may overlap with training, education, and vocational opportunities and shifting labor market needs?

Lost Income

Are costs to support tutoring, specialized training, accommodation (including upgrades, training, support, and maintenance) included?

Are costs to look at job modifications, job search, testing (vocational, neurological, ecological, psychological, etc.) included?

Are vocational evaluations included that look at long-term labor market changes and technology and training impacts included?

Summary

Clearly, these questions are intended to be only a partial list of possible considerations that can refine and further define the impact of projected long-term needs associated with the four base line consideration used as part of most settlement strategies.

The impact of the ACA can likely enhance a long-term fiscal impact analysis and expand the typical case evaluation beyond the current set of experts currently used to provide a more nuanced view to a victims needs over their anticipated lifetime.

The possibility of using other Civil Right requirements to focus on how social, community, educational, and vocational impacts can influence a person's life (and support costs) can allow for enhanced case options.

We share one very important trait with our clients: we view our success as being inseparably linked to their success. This sense of shared mission and purpose drives Sierra to create sustainable and achievable plans, which maximize the creative use of shared and limited resources.

About the Author :

Michael Fiore is a consultant that provides evaluations, case management services, and expert testimony on a variety of complex case involving disability and long-term care. Mr. Fiore speaks often on issues of accommodation and economic impact.

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