

April 2006

MSP SOLUTIONS NEWSLETTER

Medicare Set-Aside Issues

Back to Basics, No.1.

Settling workers' compensation and personal injury claims which involve current or soon-to-be Medicare beneficiaries can be frustrating, expensive and time consuming. Part of the problem is the tangled web of laws, regulations and policy memorandums which govern this area of law. Adding to the problem is the lack of accurate and clear information for people who deal with Medicare set-aside issues on either a regular or irregular basis. Consequently, the Medicare set-aside arena is full of confusion and misinformation.

To fill this void MSP Solutions has created a "MSA Back to Basics" newsletter. Our goal is to clearly and succinctly explain one fundamental issue in each newsletter. Limiting each newsletter to one topic will ensure each newsletter will sufficiently educate, rather than overload, each reader.

For those who deal with MSA issues on a regular basis, some of the newsletters in this series may seem too basic. However, making sure everyone understands the basic foundation of why, when and how to settle claims that involve Medicare set-aside issues is the first step in reducing the time and expense in managing such claims.

Each Back to Basics newsletter will be posted on our web page, which contains additional resources. Our web page address is www.msp-solutions.com.

Please feel free to email any questions you have about this area of law or any of the newsletters in this series. In addition, if you would like others to regularly get this newsletter, please contact me via email at goldman@msp-solutions.com or call me at 1-866-6717 and I can add them to the distribution list.

Sincerely,



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Back to Basics
No. 1
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Myths, Truths and Half-Truths Regarding which Workers' Compensation Settlements Require the Parties to Protect the Interests of Medicare.

Most attorneys, adjusters, insurance executives and risk managers know they must take Medicare's interests into consideration when settling certain workers' compensation and personal injury claims.

However, there are plenty of myths, truths and half-truths surrounding the way you identify those cases which require protecting the interests of Medicare, and the methods the parties must use to protect those interests.

Confusion has been caused by two primary factors. First, Medicare started issuing policy memorandums in July of 2001. The memorandums attempted to instruct the parties to a workers' compensation settlement which claims required taking steps to protect the interests of Medicare. Unfortunately, the policy memorandums did not track the underlying Medicare laws and regulations which preclude Medicare from being primarily liable for medical treatment which is, was, or should be, the responsibility of another party.

For example, the first memorandum issued by Medicare on July 23, 2001 states:

Injured individuals (who are not yet Medicare beneficiaries) ***should only consider Medicare's interests when*** the injured individual has a "reasonable expectation" of Medicare enrollment within 30 months of the settlement date, and the anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be greater than \$250,000. (Emphasis added.)

The memo went on to say that "Medicare beneficiaries must always consider Medicare's interests."

Most people, including attorneys, read the portion outlined above and thought "well, the July 23, 2001 Memorandum indicates that the parties only need to protect the interests of Medicare if the settlement meets the threshold limits set forth in the Memorandum." Therefore, many individuals settled cases which did not meet the threshold limits in a manner that did not protect the interests of Medicare.

The Medicare laws and regulations do not allow anyone to shift liability to Medicare, **regardless of the amount of the settlement.** (The laws which govern the settlement of workers' compensation and liability claims are frequently referred to as the Medicare Secondary Payer [MSP] laws and regulations.)

Furthermore, the July 23, 2001 Memorandum issued by Medicare is only a policy memorandum. Policy memorandums are not law. Regardless, many self-proclaimed "experts" were telling their clients that they did not have to protect the interests of Medicare if the settlement did not meet the threshold limits outlined by Medicare. Unfortunately, many of the "experts" were wrong.

On July 11, 2005, almost 4 years after the July 23, 2001 Memorandum, Medicare issued another Memorandum which correctly tracked the MSP law. The 2005 Memorandum states that regardless of the amount of the settlement, the parties to a workers' compensation settlement must always protect the interests of Medicare. The memorandum went on to state the threshold limits set forth in each memorandum are "not a safe harbor." The memo also explained that the threshold limits set forth by Medicare are merely a gate-keeping device to limit the number of cases sent to Medicare for formal review.

The principle to learn from this newsletter is that the threshold limits set forth by Medicare are merely a device to limit the number of settlements Medicare formally reviews on a regular basis.

Therefore, any settlement which has the potential to shift liability to Medicare should be settled and structured in a manner which complies with the Medicare Secondary Payer laws and regulations. The MSP laws and regulations prohibit parties to a workers' compensation or personal injury settlement from shifting liability to Medicare.

This does not mean that each case requires a Medicare set-aside agreement. However, it does mean that you should have reasonable policies and procedures in place to deal with **all** settlements which have the potential to shift liability to Medicare.

Authored by Glen B. Goldman, Esq.

Glen Goldman is the Director and founder of MSP Solutions, a Division of Ritsema & Lyon, P.C., of which he is a shareholder. Mr. Goldman provides cutting-edge and forward-looking advice and consulting services to his many clients throughout the country. Mr. Goldman can be reached at: goldman@msp-solutions.com or 1.866.677.6717.

MSP Solutions was created to provide its clients a highly skilled team to help them manage all Medicare Secondary Payer compliance issues which surround the settlement of workers' compensation and personal injury claims.

MSP Solutions also helps its clients negotiate and resolve current Medicare liens. **MSP Solutions** helps its clients develop practices to efficiently and effectively deal with Medicare set-aside issues. If you want to experience a partnership with Medicare set-aside and compliance service provider who takes great care of its clients, give us a call at **866-677-6717** or visit our web site at **www.msp-solutions.com**.