

## **Medicare Update – July 2005**

**On July 11, 2005, the Centers for Medicare and Medicaid Services (CMS) issued a new memorandum regarding the Medicare Secondary Payer Statute and its relationship to settlement of workers' compensation claims.**

### **New Threshold Limits**

CMS has revised its review threshold limits. Prior to July 11, 2005, Medicare wanted to review any settlement which involved a current Medicare beneficiary. Medicare has advised the workers' compensation community that it wants to review the settlement of any workers' compensation claim which meets the following threshold limits:

1. The claimant is a current Medicare beneficiary **and** the settlement exceeds \$10,000; **or**
- 2.a. The claimant has a reasonable expectation of becoming a Medicare beneficiary within the next 30 months; **and**
- b. The expected payout of the settlement exceeds \$250,000.

The revision of the threshold limits permits the settlement of a workers' compensation case with a current Medicare beneficiary, without seeking CMS approval if the settlement does not exceed \$10,000.

### **Threshold Limits Are Not A "Safe Harbor"**

A number of people who settle workers' compensation claims have been under the impression that if the settlement does not meet the threshold limits set forth by Medicare, the parties can settle without considering Medicare's interests.

Such position, however, is contrary to the Medicare Secondary Payer Statute which precludes the parties from shifting liability to Medicare in any case. In the most recent memorandum, Medicare specifically states that the threshold limits are merely a device to limit the number of cases sent to Medicare for review and do not provide any type of "safe harbor" threshold for complying with the Medicare Secondary Payer Statute.

So, even though a case does not meet the threshold limits, the parties still have to reasonably protect Medicare's interests. This may mean creating a formal Medicare Set-Aside Agreement.

A copy of the July 11, 2005 memorandum has been provided with this newsletter as an attachment. CMS should have this new memorandum posted at the following link within the next week:

[www.cms.hhs.gov/medicare/cob/attorneys/att\\_wc.asp](http://www.cms.hhs.gov/medicare/cob/attorneys/att_wc.asp)