

PRESIDENT'S PAGE

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Who among us hasn't experienced the frustration of being unable to verify the precise amount of a Medicare lien or make contact with a live person at the Centers for Medicare and Medicaid Services (CMS) to address its resolution? Too often, elderly or severely injured plaintiffs don't survive long enough to benefit from a long-awaited resolution of a Medicare lien, calling to mind the phrase "justice delayed is justice denied."

The Medicare Secondary Payer (MSP) system is intended to ensure that Medicare does not pay for health care services when a third party—for example, a group health or workers' compensation plan—has primary responsibility.

But the current system is unwieldy and impossibly sluggish. It makes it difficult to obtain reliable verification of the amount of a Medicare lien and retains antiquated procedures for communicating with CMS, meaning delayed justice for plaintiffs and delayed payback of Medicare benefits to the government. Moreover, if a party responsible for repaying funds to Medicare disagrees with CMS's calculation, there is no clear and timely appeals process.

As a result, plaintiff lawyers sometimes must delay settlement negotiations and routinely hold settlement funds in escrow for many months and even years while attempting to verify and resolve Medicare liens. In some cases, Medicare has demanded additional reimbursement after a case has been settled and funds have been distributed.

A better way

AAJ has been working with the Medicare Advocacy Recovery Coalition (MARC) on a bill that would solve many of the recurring problems with the MSP system. MARC's broad-based membership includes major insurers and large companies like Target. With the coalition, AAJ is supporting the Medicare Secondary Payer Enhancement Act (MSPEA), which will streamline and expedite MSP procedures and provide some certainty that will benefit all involved in resolving third-party liability claims.

The MSPEA (H.R. 4796), which enjoys bipartisan sponsorship, would establish a workable procedure for parties to determine how much is owed to Medicare before a case is settled, create a right of appeal for parties who disagree with CMS's calculation of the

amount due, and establish a reasonable period of limitations. One notable feature: Plaintiffs may calculate the amount they believe is due, and Medicare will have 75 days to appeal that calculation. Or plaintiffs may request a final reimbursement amount, and CMS will have only 60 days to respond or lose its right to reimbursement.

On a related front, there remains considerable confusion and misinformation concerning set-aside requirements for third-party liability claims under §111 of the MSP Act. Many insurers and defendants erroneously require set-asides as a condition of payment. AAJ has drafted an MSP fact sheet, which we believe provides the correct interpretation of §111 and related regulations.

The fact sheet and my August 2009 letter to AAJ members regarding §111 reporting requirements can be found on AAJ's Web site at www.justice.org/msp. Recent statements from CMS regarding the use of set-asides in liability cases can be found at [www.cms.hhs.gov/MandatoryInsRep/Downloads/Oct2209NGHP Transcript.pdf](http://www.cms.hhs.gov/MandatoryInsRep/Downloads/Oct2209NGHP%20Transcript.pdf).

The AAJ Exchange offers two litigation packets that provide in-depth information regarding MSP reimbursement: the "Medicare and Medicaid Reimbursement Claims Survival Guide" and the "ERISA Reimbursement Claims Survival Guide." To purchase these packets, visit www.justice.org/exchange, or call (800) 344-3023 or (202) 965-3500, ext. 8615.

Past AAJ teleseminars on the topic—"A Survival Guide to ERISA-Based Liens," "Medicare—Liens and Set-Asides," and "Preparing for Absolute Medicare Compliance: Understanding the New Requirements and Their Effect on Your Practice and Set-Asides"—can be purchased by visiting www.iplaybackaaaj.com or calling (800) 241-7785.

Until the system is overhauled, these resources can help you handle claims involving MSP reimbursement. But it's clear that the system is sorely in need of the fix the MSPEA provides. Go to www.peopleoverprofits.org to send a message to your congressional representative asking him or her to cosponsor H.R. 4796.

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