

MSA Insider

Special Edition



Getting You to Settlement



Federal Government Passes New Legislation: New Settlement Reporting Requirements Stiff Penalties for Non-Compliance.

Right before the New Year, the Federal Government passed the "Medicare, Medicaid, and SCHIP Extension Act of 2007." Only a very small section of the Act addresses the Medicare Secondary Payer Act (MSPA), but it is a significant one. The new law requires that workers' compensation carriers, general liability carriers, and no fault carriers provide the Secretary of Health & Human Services (HHS) with details of any settlement involving a Medicare beneficiary. The law does not go into effect until July of 2009 and the Secretary is charged with working out the details of the reporting requirements. The law does specify, however, that the repercussions for not complying will be severe. The Secretary will be able to issue a **civil penalty** in the amount of **\$1,000 per day** for those that do not comply with the new law.

What does this mean in a nutshell? The Federal Government is providing the means by which it can easily monitor settlements involving Medicare beneficiaries. The stiff civil penalty means that participants in a settlement will be eager to provide the Secretary with the required information. The Secretary will then be able to determine (from the information collected) if the parties have complied with MSPA. Those parties that have not complied with the MSPA by establishing a Medicare Set-aside and making sure that all conditional payments have been satisfied could then face further action by the Secretary.

Prior to this law, general liability insurers were covered by the MSPA but the Federal Government openly stated that it was not going to be monitoring compliance. Therefore, parties involved in a general liability claim typically ignored the requirements of the MSPA. The new law, however, clearly indicates a shift in policy as it appears the government will now be monitoring the general liability claims as well. There are still many questions that need to be answered (and should be in the coming months), but it appears that the general liability parties will no longer be able to enjoy a free pass on complying with the MSPA.

Fortunately, MedAllocators' current array of services already assists our clients in complying with the MSPA. Michael Merlino, the new attorney hired by MedAllocators for these specific issues (see insert) will be following this issue closely. As the Secretary publicizes the reporting requirements, MedAllocators will be there evaluating and assessing the process. In response, MedAllocators will issue frequent reports (like this) and develop new services to meet its clients' needs so they can stay one step ahead of the Government and not be at risk of facing unnecessary civil penalties or running afoul of the MSPA.

Attorney Joins MedAllocators Team

Michael R. Merlino II, an attorney licensed to practice law in Georgia and New York has joined MedAllocators as its Compliance Director. Mr. Merlino has years of experience dealing with The Centers for Medicare and Medicaid Services (CMS) on Medicare Set-asides (MSA) and conditional payment issues. He has successfully negotiated hundreds of MSAs through CMS' complicated processes. Mr. Merlino will be available to answer any questions about Medicare, MSAs or conditional payments. His primary function will be providing creative solutions to complex Medicare issues. His philosophy is that complying with the MSPA should not prevent the settlement of the underlying litigation.

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