

# MSA Insider



Getting You to Settlement

January 2010

Your Premiere Compliance Solution

## MEDICARE FIRES SHOT ACROSS THE BOW OF SETTLING PARTIES

On December 1, 2009 the federal government filed suit in federal court in Alabama (USA v. Stricker, 1:2009cv02423) seeking reimbursement against parties in a mass tort settlement involving PCB pollution. The settlement for \$300 million was completed in 2003 and the government is alleging 907 members of the settlement are Medicare beneficiaries for which it is owed reimbursement. The suit is against the plaintiffs' attorneys to the extent they received payments from the primary plans and the primary plans themselves, i.e. insurance companies and self-insured companies. The government claims neither side considered Medicare's interests in settling the case. Besides seeking reimbursement for conditional payments made on behalf of the Medicare beneficiaries, the government is also seeking interest and double damages.

***This case is significant because it demonstrates the following:***

- ◆ The government is strongly enforcing its lien rights, even six years after a case settles.
- ◆ Standard language in settlement documents releasing defendants from any and all liability may not protect them from Medicare liens or demands.
- ◆ Medicare's interest must be considered at the time of settlement, especially now that most of these settlements will be reported to Medicare pursuant to Section 111.

### New Forms for Medicare Lien Investigations

On October 1, 2009 Medicare implemented new procedures and forms to be used to obtain and challenge conditional payments. Consequently, when requesting a Medicare Lien Evaluation (MLE) these new forms will be forwarded to you for completion. The forms and procedures are outlined below:

### **Authorization to Represent**

Medicare now requires an insurance carrier or TPA to authorize third parties, such as MedAllocators, to investigate conditional payments on their behalf. Upon request for a Medicare Lien Evaluation, MedAllocators will forward an Authorization to Represent statement which will need to be transferred to the carrier's letter and signed by the insurance carrier or TPA. We will no longer require the Consent to Release form for an MLE (The Consent to Release will still be needed for an MSA submission). The Authorization to Represent statement will allow MedAllocators to obtain a printout of conditional payments only in workers' compensation cases and will not allow for the challenging of unrelated conditional payments. (See below regarding Proof of Representation).

### **Proof of Representation**

Besides a completed Authorization to Represent statement, the new Medicare procedures require a Proof of Representation form be completed to request an itemization of conditional payments in liability claims. Further, to challenge unrelated conditional payments or to seek a compromise in either a workers' compensation or liability claim, a Proof of Representation is required. The Proof of Representation must be signed by the claimant and the insurance carrier or TPA must sign to acknowledge their representation of the claimant before Medicare. Slightly different forms are required for a request through a claimant's attorney. Proper forms will be forwarded upon request for an MLE.

2905 Premiere Parkway . Suite 375 . Duluth, Georgia 30097 . 866.270.2516

### MedAllocators' EVENTS:

#### **PRESENTATION:**

January 22, 2010  
North Carolina Public Risk  
Management Association.  
Greensboro, NC

Presented by  
Daniel Anders, Esq.,  
Compliance Director

#### **WEBINARS:**

Liability Settlements &  
Compliance with the Medicare  
Secondary Payer Act.

The mandatory reporting of liability settlements to Medicare has resulted in an increased awareness of the need to comply with all provisions of the MSP Act. This informative webinar will provide a detailed overview of Medicare compliance when dealing with liability settlements.

Dates: January 26th  
12noon - 1:00pm EST

Medicare Compliance and  
Workers' Compensation: A 2010  
update on MSA's, Medicare  
Liens and Mandatory Reporting

This webinar will provide a detailed overview of Medicare compliance when dealing with workers' compensation settlements.

Dates: February 10th, 17th & 24th  
12noon - 1:00pm EST

To register please contact your local  
Account Executive or email us at  
CEU@MedAllocators.com