

Medicare and Liability Settlements – Reasons to Join a Coalition to Reform the Medicare Secondary Payer Statute

- Effective July 1, 2009 Medicare will require self insureds and insurance carriers to report to it all Settlements, Awards and Judgments that involve a Medicare beneficiary or otherwise incur a penalty up to \$1,000 per day for each claim.
- There is no method to identify a Medicare beneficiary. 44 million people are on Medicare, 85% are 65 or older, others go across the age spectrum; and the burden is on the self insured or insurance carrier to know this.
- The self insured or insurance carrier will need to ask each time a case is resolved whether it involves a Medicare beneficiary and take the appropriate actions to protect itself from contingent liability. There is no safe harbor from Medicare if the self insured or insurance carrier is not told the truth by the Medicare beneficiary about their status.
- Contingent liability for the self insured or insurance carrier occurs when a payment is made to a Medicare beneficiary as part of a Settlement, Award or Judgment. The self insured or insurance carrier is now responsible to reimburse Medicare for health care services it paid for in connection with the liability claim as well as responsibility for future medical services. The contingent liability could equal (or possibly exceed) the original payment of the Settlement, Award or Judgment.
- Contingent liability will substantially increase the time it takes to close the liability claim and will result in increased claim costs.
- The self insured or insurance carrier will need to obtain reimbursement amount information from Medicare, before it can settle a claim but cannot do so without consent from the Medicare beneficiary.
- Assuming consent is given the reimbursement amount information provided by Medicare is not binding on Medicare and may contain errors. Medicare will not settle the reimbursement amount prior to a Settlement, Award or Judgment with the Medicare beneficiary.
- Assuming payment to the Medicare beneficiary, Medicare will not negotiate the reimbursement amount and take into consideration the application of fault principles or claim defenses that were available in the liability claim. Medicare may consume the entire payment amount to satisfy the reimbursement amount; and may collect it directly from the self insured or insurance carrier, irrespective of whether it was already paid to the Medicare beneficiary. This will increase claim costs.
- Medicare may suspend benefits to the Medicare beneficiary if it is determined that Medicare's interests were not taken into consideration as part of the Settlement, Award or Judgment. The self insured or insurance carrier may be subject to a separate action (private or public) to recover these benefits under the law and the recovery is doubled.
- There are no rules established for the self insured or insurance carrier to know when they have satisfactorily taken into consideration Medicare's interest.
- The Medicare Secondary Payer Law needs to be changed. A coalition has been formed to do this and needs your support. To join the Medicare Advocacy Recovery Coalition (MARC) or obtain further information, please e-mail: roy.franco@safeway.com or call 925.216.5727.