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Posted on Fri, Jul. 10, 2009

## Medicare won't let clients repay government, lawyers say

David Goldstein | McClatchy Newspapers

*last updated: July 10, 2009 04:01:32 PM*

WASHINGTON — Attorney Stephen Bough's client owes Medicare several thousand dollars and is anxious to pay, if only Bough knew how much. Medicare won't say, despite repeated pleas over the past year for an answer.

"I keep telling them there's money waiting," said Bough, who practices in Kansas City, Mo. "Not many people send letters for a couple of months and say, 'Let me send money,' and get ignored."

It took Kansas City attorney John Kurtz more than a year to find out how much his client, also a Medicare beneficiary, owed to the federal government's health care program for the elderly.

Usually it's Washington that's trying to squeeze money out of taxpayers. Here's a case of some people trying to pay the government what it's owed, only to learn that Washington doesn't seem to be that interested.

They're personal injury lawyers and they represent Medicare beneficiaries who've been in accidents. Medicare has paid their hospital costs, which must be reimbursed once the victim reaches a damage settlement with the party at fault.

Lawyers in Kansas City and elsewhere, however, said that Medicare can be extremely slow to tell them what its share of the settlement should be, taking several months and as much as a year or more.

That can prevent them from engaging in damage negotiations with the liable party's insurer, or from reaching an agreement and distributing the money if they already have.

Medicare spokesman Peter Ashkenaz said that the average wait for Medicare to tell attorneys how much their clients owe is 21 to 30 days, although it "can take as little as 10 days and as many as 60."

Kurtz first contacted Medicare in September 2007. It took until February 2009 for him to finally settle the case.

"Many consumers who are waiting on money that they deserve are either experiencing a ridiculous level of delay or not even getting money," said Gerie Voss, director of regulatory affairs for the American Association for Justice, formerly known as the Association of Trial Lawyers of America.

Bough has been sitting on a \$60,000 settlement check for his client for more than six months. He thinks Medicare deserves about half of the money, but his letters go unanswered, including the last on April 6.

"Enclosed please find my letters of December 31, December 12, November 19, September 12. . . . We want to give the federal government money. Please let us know the amount of your lien. Please respond."

Kansas City lawyer Tim Dollar likened it to a black hole. "It's next to impossible to find a live person to talk to, so you write to them and you get no response."

Medicare officials acknowledged that some clients might not have received "good customer service."

"We hear complaints," said Gerald Walters, director of the financial service group for the Center for Medicare and Medicaid Services. "Whenever an attorney can give us specificity, we can try to get to the bottom of this."

He said that the system works faster if attorneys notify Medicare immediately about cases involving beneficiaries who receive payments from secondary insurers.

They're supposed to request a "conditional payment letter" from the program's payment recovery contractor. It shows how much Medicare has paid toward a client's injury costs, an indication of how much its share of a settlement will eventually be.

Bough's client died of his injuries not long after Bough took the case. But the client's widow still has received nothing from the settlement. Kurtz's client, who was paralyzed in a car accident, also died. He's helping the family.

"The agony for these families who have to go through this hassle is tragic," he said, adding that many plaintiffs' lawyers could tell similar horror stories.

Medicare has a non-competitive, sole-source \$40 million contract to Chickasaw Nation Industries Inc. in Norman, Okla., to recover payments from clients in cases involving secondary insurers.

It received the contract in 2006 under federal rules governing disadvantaged businesses. A spokeswoman for Chickasaw referred questions to Medicare.

Sen. Claire McCaskill, a Missouri Democrat who's the chairman of a subcommittee on contracting oversight, has asked Medicare to explain how its payment recovery program works.

"People are trying to pay Medicare and Medicare is not paying any attention," she said. "Clearly with our health care costs where they are and the amount taxpayers are spending on Medicare, the notion that someone is trying to give them money and no one is home is pretty offensive."

As of March 31, Medicare clients owed the agency \$201 million in cases involving secondary insurance payments, Walters said. It's hard to know how much of that money was, like Bough's \$60,000, sitting in an escrow account or a safe in some

lawyer's office.

"I know we've had in excess of several hundred thousand dollars and it just sits there," Dollar said. "This is rampant."

Patrick LePley, a personal injury lawyer in Bellevue, Wash., said that he's held as much as \$200,000 to \$300,000.

"Two years ago, I held over \$70,000 for almost 18 months," he said. "I thought my guy was going to die."

LePley said that Medicare appeared to be taking steps to improve the situation because it seemed to him that lately he's not holding onto money as long.

He said that another problem was Medicare asking for more money after a lien had been settled if additional charges from hospitals and doctors suddenly showed up.

Walters said that Medicare issues demands for new payments only when an attorney "gives us misinformation."

LePley, however, said that in one case where his client died after the settlement, Medicare subsequently demanded more money and went after the client's widow, threatening to withhold her Social Security income. LePley appealed the new bills and Medicare dropped the lien.

"They're dunning a widow who is distraught," he said. "Why does anybody have to go through this?"

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