

Odd allies in Medicare fight

Diverse coalition lobbying for Medicare bill

Plaintiffs' bar, Chamber of Commerce want feds to speed settlements.

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An imposing new obstacle is getting in the way of the nation's personal-injury lawsuits. It has nothing to do with the merits of the cases, or how the courts are operating. The obstacle is Medicare, the federal health insurer for the elderly. Lawyers say the program is disrupting a countless number of their settlements.

Court papers in Connecticut describe one example: After a minor is hurt in a traffic accident, his family agreed to a settlement of \$7,500 with the other party's insurer, but the settlement broke down when the insurer, United Services Automobile Association, said it needed to run the minor's case by Medicare. Minors aren't eligible for Medicare, but the insurer said it had no choice under federal law.

The disruptions are happening because, under a 2007 law, Medicare is making a new effort to collect money it's owed. The effort is targeting auto insurers, worker's compensation insurers and other third parties that are liable for injuries, like a grocery store in a slip-and-fall case. Under federal law, third parties are supposed to reimburse Medicare if the federal program has paid an injured person's medical costs.

But lawyers say they often have difficulty getting a final number, or even a good estimate, for how much Medicare is to be paid. The number is vital to determining how much a settlement should be. Even in cases where the number will be zero, as with the minor in Connecticut, the parties want to be sure because they could face sanctions of \$1,000 a day per claim if they shortchange Medicare, even by accident.

Medicare officials say their effort has the potential to save taxpayers billions of dollars, but they acknowledge the amount of paperwork is overwhelming and is causing delays. Between the fiscal years 2007 and 2010, the number of cases involved grew by 86%.

In Washington, an unusual set of organizations doesn't want to wait for Medicare to work through the bureaucracy. The American Association for Justice, which lobbies for plaintiffs' lawyers, and the U.S. Chamber of Commerce, the largest lobbying group for business, are on the same side. Joining them are major corporations such as the Walt Disney Co. and Wal-Mart Stores Inc., as well as defense-side law firms and their trade group, the Defense Research Institute.

"We're typically not on the same side of issues. The fact that we are shows how broken the system is," said Sarah Rooney, regulatory counsel for the American Association for Justice. Rooney said her organization's membership has become increasingly frustrated with the issue.

RESOLVING CLAIMS

The groups are pushing legislation that would rein in Medicare. The bill would set a hard deadline for Medicare to notify the parties to a claim how much the program is owed, or else Medicare would lose its right to collect the money at all. It would create a "safe harbor" from the \$1,000-a-day penalties based on willfulness and other factors. It would also require Medicare to resolve its claims to reimbursement within three years of a settlement — whereas now there is no statute of limitations. Reps. Tim Murphy (R-Pa.) and Ron Kind (D-Wis.) are the bill's lead sponsors.

In an interview, Murphy said he's heard complaints about Medicare's "secondary payer" system from lawyers and seniors in his Pittsburgh-area district. "Seniors need the peace of mind of knowing this has been working smoothly, that they're not going

to be caught up in a bureaucratic mess that's going to cost them money," he said.

Patton Boggs partner David Farber said the collection of interests behind the bill is "stunningly diverse." He's lobbying for the bill on behalf of the Medicare Advocacy Recovery Coalition, which includes grocers, retailers and defense-side law firms. The system as it is, he said, makes it more likely that defendants will go to trial, something they usually try to avoid.

"The result of the mandatory \$1,000-per-claim penalty will be companies being all the more cautious about settlements, and it may result in a contraction of the number of settlements simply because the risk of penalty is greater than the risk of not settling," Farber said. (The penalties already exist in some cases and are scheduled to take full effect in January.)

Medicare officials frame the problem as one of resources and education. Deborah Taylor, the chief financial officer of the Centers for Medicare & Medicaid Services, told a House oversight subcommittee in June that officials are examining possible internal changes to make the process more efficient. She said proposals like the pending legislation "would adversely affect savings that would otherwise accrue to the Medicare Trust Funds" — meaning they threaten to cost taxpayers money. A spokeswoman for the centers did not respond to interview requests last week.

COSTLY DELAYS

Lawyers who interact with the system say it's already costing taxpayers money because it's so inefficient. In one example that has made the rounds on Capitol Hill, Medicare sent a demand letter in 2009 in a personal-injury case asking to be reimbursed for \$1.59 out of a \$4,500 settlement. A provision in the pending legislation would exempt from Medicare's collection efforts any cases below a certain threshold, to be determined later.

In other cases, Medicare's not getting the money as quickly as it could. Stacey Pietrowicz, an associate at Sugarman and Sugarman in Boston, said Medicare inadvertently closed its file on one of her clients, a man who brought a wrongful death suit after his wife died in a case of alleged medical malpractice. Pietrowicz had to restart the process of reimbursing Medicare for the woman's care, delaying the settlement of the wrongful death suit by about three months until she received Medicare's final demand for payment. The settlement money sat in escrow.

"It's truly ironic that trial lawyers can't get the government to take back money that belongs to the taxpayers," said Marianne LeBlanc, a partner at Sugarman and Sugarman. "The problem is that they won't tell us how much we owe them, so we can't pay them."

William Cremer, who represents insurance companies as a partner at Cremer, Spina, Shaughnessy, Jansen & Siegert in Chicago, said the Medicare rules affect every case his firm handles, even if they don't think Medicare paid any medical bills in a case. That's because the firm still has to ask and verify, so it doesn't get hit with a penalty. "That's why it has this paralyzing effect on getting these cases done," Cremer said.

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