



Medicare Advocacy Recovery Coalition

PRESS RELEASE

MARC Coalition Praises Two Recent Court Decisions Addressing Medicare Secondary Payer (MSP) Issues

Bradley v. Sebelius and US v. Stricker

October 5, 2010 -- The Medicare Advocacy Recovery Coalition (MARC) today praised two recent court decisions resolving important issues affecting the Medicare Secondary Payer (MSP) program. Both cases illustrate the difficulty of working with the current Medicare Secondary Payer laws. Courts have described the MSP laws as “convoluted and complex” and a “model of un-clarity”. While these decisions provide guidance on some discrete MSP issues, ultimately legislation is needed to reform these laws for the benefit of Medicare beneficiaries, taxpayers and regulated organizations.

The two decisions, *Bradley v. Sebelius* in the United States Court of Appeals for the Eleventh Circuit, and *United States v. Stricker*, in the federal District Court for the Northern District of Alabama, were both issued on September 29, 2010. The *Bradley* decision addressed a critical and to date unresolved MSP issue regarding the extent to which Medicare can recover from settlements and judgments involving both health care and other claims. In the *Stricker* decision, the district court, agreeing with several previous decisions, defined the statute of limitations applicable to MSP claims.

In *Bradley*, the Eleventh Circuit decided that Medicare was bound by a state court decision allocating a nursing home malpractice judgment between a beneficiary and her family, and could not recover its MSP claim from other family members who were allocated a percentage of the settlement by the state court. Importantly, the Court refused to give deference to the government’s “MSP Manual,” finding that document which instructed MSP contractors to ignore settlements or uncontested state court judgments as without binding authority on the regulated community. The Court further found that precluding MSP recoveries from allocated settlements furthered the important policy goals of judicial economy and encouraging settlements. “*We are delighted that the Eleventh Circuit has squarely addressed an important and open issue in these cases,*” noted Katie Fox, Vice President, Medicare Compliance for Franco Signor, LLC and former MARC Co-Chair. “*The Medicare program has been slow to acknowledge settlement allocations between health care and other claims, and the Eleventh Circuit’s decision has now settled this important issue*” stated Roy Franco, MARC Co-Chair. Roy Franco added: “*we welcome CMS responding to the decision, and changing its manual consistent with the Eleventh Circuit’s ruling.*”

Similarly, in *Stricker*, the court discussed the government’s MSP recovery case against a group of plaintiff lawyers, defendants, and insurers, involved in the 2003 settlement of a major PCB mass tort action in Alabama. *“We further welcome the court’s clarification of the applicable statute of limitations to MSP claims, which has been an area of considerable confusion across the country”* noted Chris Longeway, MARC Co-Chair and Senior Attorney for Allstate Insurance Company. He added: *“given the multiple judicial decisions addressing this issue, and the possibility for future litigation, however, MARC calls upon Congress to add a specific statute of limitations to the MSP statute, such as the three year limitations period proposed by H.R. 4796 before the U.S. House of Representatives right now.”*

MARC was also quick to note that while many might read these two decisions as a “loss” to the government, both rulings were actually a “win” for the MSP program. *“Further clarity around the rules of the road will allow litigating parties to settle sooner, and create a greater pool of funds from which to reimburse the Medicare Trust Fund,”* Chris Longeway noted. *“By creating a fair and clear set of rules for MSP recoveries, beneficiaries, settling parties, judicial economy, and ultimately the Medicare Trust Fund will all benefit.”*

About MARC

The Medicare Advocacy Recovery Coalition (MARC) advocates for the improvement of the Medicare Secondary Payer program for beneficiaries and affected companies. The coalition has been collaborating and developing strategic alliances with Congressional leaders and government agencies to focus on broader Medicare Secondary Payer (MSP) reform. MARC’s membership is comprised of entities representing virtually every sector of the MSP regulated community including attorneys, brokers, insureds, insurers, insurance and trade associations, self-insureds and third-party administrators. For more information, please visit www.marccoalition.com.

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