

Medicare Moves to Recover Costs in Liability Cases

Allsup outlines repercussions, considerations for MSP compliance

Allsup Belleville, Ill. – Any doubt that Medicare is getting tougher on insurance liability cost recovery went out the window with recent lawsuits seeking back pay from settlements that happened six years ago.

Activity Summary

Recently, the Centers for Medicare & Medicaid (CMS) has taken a harder look at liability cases. In an effort to recover past and future overpayments from both insured and self-insured parties, CMS filed lawsuit Dec. 1, 2009, against all parties that settled a pollution liability case in 2003. The lawsuit, *U.S. v. Stricker*, involves plaintiff's attorneys, defendants and insurers as Medicare fulfills its pledge to hold accountable everyone involved in the \$300 million settlement. The suit cites Medicare Secondary Payer (MSP) provisions in federal law that allow Medicare to recover these overpayments.

One of several CMS lawsuits in process, *U.S. v. Stricker* is especially significant because it serves notice that CMS will seek payments from both defendants and plaintiffs in a liability settlement involving Medicare-eligible parties, according to a Web-based report in *Business Insurance*.

Companies named in the suit, according to Business Insurance, include New York-based American International Group, St. Louis-based Monsanto Co., New York-based Pharmacia Corp., St. Louis-based Solutia Inc., and Hartford, Conn.-based Travelers Indemnity Co. The suit also names those who received settlement payments, law firms and individual attorneys involved in the original cases, including *Abernathy v. Monsanto Co. et al.*

The case states that the parties did not include steps to determine whether plaintiffs were Medicare beneficiaries, reported *Business Insurance*, and that funds were owed to CMS as a result of conditional medical payments made to Medicare-eligible plaintiffs. Activity is continuing on the case, including a motion by several defendants in early 2010 to dismiss the complaint. In return, Medicare has filed a response, and more developments are likely in coming weeks.

Repercussions For Liability Market

Liability insurance is an increasingly scrutinized environment, and this lawsuit demonstrates that all parties involved in a settlement must be able to justify and document how they arrive at a settlement—especially the medical portion.

“This has a new effect for liability insurers, who previously were not exposed under CMS’ magnifying glass,” according to Rob Sokol, director of commercial sales-Medicare Second Payer compliance at Allsup.

Liability insurers can expect that when arriving at a settlement that incorporates amounts for medical expenses, they are going to be asked how they arrived at these amounts, Mr. Sokol said. In this way, the settlement process is comparable to the workers’ compensation settlement environment, which currently relies on a highly structured reporting process designed to protect Medicare’s interest as a secondary payer in those claims. The critical tool allocating funds toward medical treatment is provided through the Medicare set-aside (MSA).

“It’s a red flag that this case goes back several years,” Mr. Sokol said. “But it’s important for companies to heed the warning now and begin nailing down their Medicare compliance processes.”

The industry standard to determine settlement value includes medical expenses, lost income, and damages or pain and suffering. “It’s now apparent that the value of medical treatment requires more attention than it was given in the past,” Mr. Sokol said. “One of the risks is that CMS could come back and say the entire settlement amount could be applied toward medical treatment.”

Documentation of medical expenses provides greater protection and benefits the liability insurer, the attorneys, the Medicare program and the individual. In this way, MSAs fill a vital role for workers’ compensation settlement, and the practice can be applied in the same way to the liability sector. “Establishing an MSA is a prudent, risk-mitigating step,” he said.

Next Steps: Allsup’s Comprehensive Solution

Companies exposed to Medicare Secondary Payer (MSP) compliance regulations through liability settlements should examine MSA processes as they evaluate the reverberations from this lawsuit.

Allsup provides a comprehensive suite of services to address Medicare compliance issues, using expertise and knowledge based on more than 25 years of success in evaluating medical data and submitting it to regulatory agencies. The Allsup Medicare Secondary Payer (MSP) Services ensures consistent, cost-effective and measurable compliance with federal provisions. Allsup specialists:

- Verify Medicare entitlement dates and status
- Analyze the need for Medicare Set-Aside allocations and submissions
- Determine Medicare Set-Aside amounts
- Inquire about Medicare conditional payment status
- Provide Medicare beneficiary notifications
- Provide Medicare conditional payment verifications and resolutions
- Establish allocation amounts

- Electronically submit to CMS for approval
- Expedite MSA completion

In light of CMS' recent activities, establishing an MSA process to address Medicare compliance concerns is becoming the best way to protect the provisions of a settlement. "CMS already relies on MSAs as an accepted method of documenting medical expenses to outline primary and secondary payer responsibilities for an individual as part of a settlement," he said.

Allsup has an 85 percent CMS approval rate for Allsup-determined MSAs. An additional 11 percent of Allsup-determined MSAs are adjusted slightly higher by CMS and accepted by the client with the increase. The remaining 4 percent are negotiated with CMS.

"Providing an MSA removes the mystery about the medical portion of a settlement and establishes clear primary and secondary payer parameters," Mr. Sokol said. "CMS has placed the notice on the door. It's time to start taking the steps to protect future settlements. Allsup stands ready to provide expert professional assistance."

Contact Allsup

Contact Allsup at (866) 477-7005 or [click here to e-mail us](#) for more detailed information about how Allsup's comprehensive Medicare Secondary Payer (MSP) Service can help your organization.

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