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SPECIAL REPORT: Medicare Secondary Payor Compliance

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CONCEPT	
MSP Mandatory Reporting	<ul style="list-style-type: none"> - Notice and reporting to Medicare of claims involving Medicare beneficiaries - Determine whether claimant is entitled to Medicare; - If so, report to Medicare
Conditional Payments	<ul style="list-style-type: none"> - Protecting Medicare's interests by reimbursing Medicare for past payments already made by Medicare. - Any overpayments or conditional payments that Medicare may make prior to settlement must be reimbursed before any other claims or liens.
Medicare Set Asides	<ul style="list-style-type: none"> - Protecting Medicare's future interests for a claimant's post-settlement medical treatment.

APPLICABLE LAW	
MSP Mandatory Reporting	<ul style="list-style-type: none"> - MMSEA §111 - 42 U.S.C 1395y(b)(7)&(b)(8)
Conditional Payments	<ul style="list-style-type: none"> - 42 U.S.C 1395y(b)(2)(A)&(B) - A Medicare payment for which another payer is responsible, make either on the bases set forth in subparts C through H of this part, or because the intermediary or carrier did not know that coverage existed - 42 C.F.R 411.21

Medicare Set Asides	<ul style="list-style-type: none"> - Series of internal memos issued by CMS since 2001 - Workers Comp 42 C.F.R §411.46 & 411.47: <p>Authorizes CMS to review the ‘reasonableness’ of an allocation for future medical expenses in a WC settlement. If CMS determines that the allocation to future medical expenses is unreasonably low, it may require that the entire settlement be spent on future work-related medical expenses before Medicare will cover those services. Additionally, CMS will disregard a WC settlement completely if it appears to be an attempt to shift responsibility for future medical expenses to Medicare.</p> <ul style="list-style-type: none"> - Liability - Relies on Statute: <p>Payments may not be made under Medicare for covered items or services to the extent that payment has been made or can reasonably be expected to be made promptly, under a liability insurance policy or plan.</p> <ul style="list-style-type: none"> - 42 U.S.C 1395y(b)(2)
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RESPONSIBLE PARTY	
MSP Mandatory Reporting	<ul style="list-style-type: none"> - The “Applicable Plan” is the responsible reporting party (RRE) - Liability insurance - No fault insurance - Workers comp
Conditional Payments	<ul style="list-style-type: none"> - Beneficiary - Attorney - Employer - Insurer - Provider
Medicare Set Asides	<ul style="list-style-type: none"> - Beneficiary - Primary Payer - Anyone who received portion of settlement

WHEN	
MSP Mandatory Reporting	<ul style="list-style-type: none"> - Upon claim resolution via settlement, judgment, award or payment on or after 7/1/2009; - RRE accepts ongoing responsibility for medical payments (ORM); - TPOC exemptions may apply
Conditional Payments	- The earlier the better...Immediately, upon taking a case that involved a Medicare beneficiary, notify the COBC at 800-999-1118
Medicare Set Asides	<ul style="list-style-type: none"> - Before final settlement, IF: - There is an allocation for future injury-related medical expenses - Plaintiff is eligible for Medicare - Settlement shifts burden on Medicare - Other high risk factors exist

PROCESS	
MSP Mandatory Reporting	<ul style="list-style-type: none"> - Determine Medicare beneficiary status - If not eligible, notify defendant - If eligible, provide required information to defendant, unless TPOC exemption applies <p>TPOC Reporting Exemptions</p> <ul style="list-style-type: none"> - \$5,000 or less (7/1/09 to 12/31/10) - \$2,000 or less (1/1/11 to 12/31/11) - \$600 or less (1/1/12 to 12/31/12)

Conditional Payments	<ul style="list-style-type: none"> - Determine Medicare Beneficiary Status - Contact the COBC at 800-999-1118. - Upon receipt of MSPRC contact, request interim conditional payment amount information - Upon settlement, notify MSPRC and request final demand letter. - Negotiate compromise of reimbursement amount.
Medicare Set Asides	<ul style="list-style-type: none"> - Determine Medicare Beneficiary Status - Obtain cost projections of future medical care payable by Medicare - Determine portion of settlement for future medicals - Prepare MSA - Educate client or get 3rd party administrator - Notify CMS

NONCOMPLIANCE RISK	
MSP Mandatory Reporting	<ul style="list-style-type: none"> - RRE's penalty for non-compliance is \$1,000/day/claim - Lack of cooperation may prevent settlement.
Conditional Payments	<ul style="list-style-type: none"> - CMS can bring suit against the claimant or plaintiff, his or her attorney, the insurance carrier, or the self-insured employer or defendant for payment of the claim. - In a suit against an insurance carrier or a self-insured employer or defendant to recover its MSP claim, CMS can seek double damages. - Medicare's right of recovery is superior to any lien, even before Medicaid.
Medicare Set Asides	<ul style="list-style-type: none"> - Failure to take steps that demonstrate Medicare's interests were reasonably considered may result in a denial of Medicare benefits for future injury-related medical expenses for the settling plaintiff until entire amount of settlement is used for such expenses.

RECOMMENDED ACTION	
MSP Mandatory Reporting	<ul style="list-style-type: none"> - First determine whether client is Medicare beneficiary. If not, provide evidence to defense counsel. - If client is Medicare beneficiary, cooperate with defense counsel and provide required information.
Conditional Payments	<ul style="list-style-type: none"> - See steps above. Create a standardized compliance process to ensure identification and resolution of conditional payments.
Medicare Set Asides	<ul style="list-style-type: none"> - Determine Medicare entitlement, either current or within 30 months. - Risk Assessment. - Consult with outside counsel to review need for MSA. - Document all steps.

ABOUT THIS HANDOUT

This guide is provided as a courtesy to help you recognize potential estate planning issues. It is not intended as a substitute for legal advice. It is distributed with the understanding that if you need legal advice, you will seek the services of a competent elder law attorney. While every precaution has been taken to make this explanation accurate, we assume no responsibility for errors or omissions, or for damages resulting from the use of the information in this explanation.



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