

**Evans & Dixon, LLC**

**MEDICARE LIENS**

**By**

**Robert N. Hendershot**

**As Amended to Include**

**Memo II (4/21/03) and Memo III (5/23/03)**

## MEDICARE LIENS

### Checklist for Medicare's Interests in Workers Compensation Settlement

#### **I. Is the claimant currently a Medicare beneficiary?**

(a) If the claimant is age 65 or over-automatic qualification

(b) If claimant is under age of 65 and receives Social Security Disability and is Medicare recipient or soon to be Medicare recipient

If so, a Medicare Set Aside Arrangement is required on all medical settlements involving Medicare beneficiaries regardless of the amount of settlement and regardless of the reason for Medicare eligibility.

#### **II. Does the injured individual have a “Reasonable**

## **Expectation” of Medicare enrollment.**

- (1) Within 30 months of the settlement date, and
- (2) The anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be greater than \$250,000.00

If so, Medicare’s interests must be protected

### **A. Factors to be considered in determining “Reasonable Expectation”.**

- (1) Factors itemized in 2<sup>nd</sup> memo of 4/21/03
  - (a) The individual has applied for SSDI
  - (b) The individual has been denied SSDI but anticipates appealing that decision
  - (c) The individual is in the process of appealing and/or refileing for SSDI
  - (d) The individual is 62 years and 6 months old (i.e.), be eligible for Medicare based upon his/her age

within 30 months); or

(e) The individual has an End Stage Renal Disease (ESRD) condition but does not yet qualify for Medicare based upon ESRD.

(2) Other possible factors

(a) If claimant has been deemed to be PTD, even if claimant has not yet applied for SSDI, because SSA can back date eligibility for up to 17 months

(b) If an expert has stated that claimant cannot return to engage in any reasonable gainful employment

(c) If indemnity reserves are \$100,000.00 or more

**B. Factors that constitute “\$250,000.00 or more”.**

(1) Threshold amount includes potential exposure on future medicals and indemnity combined

(2) Use uncommuted value not present value, i.e., if the lump sum is for \$180,000.00 present value but the future value is \$300,000.00, this exceeds the \$250,000.00 threshold

(3) Consider reserves on both medical and indemnity

(4) Expected settlement amount is \$250,000.00 or more

**C. Medicare reserves the right to change these thresholds at anytime. Please note, these thresholds are policy statements and not regulations.**

**D. Criteria that Medicare uses to determine whether the amount of a lump sum or structured settlement has sufficiently taken its interests into account.**

(1) Date of Entitlement to Medicare

(2) Basis for entitlement to Medicare

(3) Type and severity of injury or illness

(4) Age of beneficiary

(5) W/C classification of beneficiary

(6) Prior medical expenses paid by W/C due to the injury or illness in the 1 or 2 year period after the condition has stabilized

(7) Amount of lump sum or amount of structured settlement

(8) Is the commutation for the beneficiary's lifetime or for a specific time period

(9) Is the beneficiary living at home, in a nursing home or receiving assisted living care, etc.

(10) Are the expected expenses for Medicare covered items and services appropriate in light of the beneficiary's condition

### **III. Types of W/C Settlements**

(1) Compromise lump-sum settlement

(a) Legitimate issues considered by Medicare

(1) Causation/Pre-existing condition

(2) Accident/AOICO

(3) Employee/Employer relationship

(b) Lump sum settlements are not automatically considered compromise cases

(2) Commutation settlements

(a) Set aside arrangements to protect Medicare must be used if other eligibility requirements are met

(b) Lump sum settlements should not automatically be considered commutation cases simply because a W/C Carrier does admit to be liable - this is not the sole determining factor

(3) Combination - commutation and compromise settlement

(a) If future medical is an aspect of the settlement, a Set-Aside Trust is recommended

(b) Medicare will not pay for work related medical expenses related to the injury or disease equal the amount of the lump sum payment

#### **IV. Medicare cannot be waived by contract.**

(1) medicare will not recognize language in settlements that promise not to bill Medicare in lieu of including those services in Set-Aside Agreement.

#### **V. It is unnecessary to establish a Set-Aside Arrangement when all the following are true:**

(a) The facts of the case demonstrate that the claimant is only being compensated for past medical expense;

(b) There is no evidence that the individual is attempting to maximize other aspects of the settlement to the detriment of Medicare; and

(c) Claimant's treating physicians conclude in writing that to a reasonable degree of medical certainty that the claimant will no longer require any Medicare - covered treatments related to the workers' compensation injury.

## **VI. Settlement with Medicare**

(a) If Medicare approves a Set-Aside Trust, there is no further exposure

### 1. Things needed:

(A) Life Care Plan or similar evaluation from a non-treating physician, if the physician does all of the following:

- (a) Examines the claimant
- (b) Reviews the medical records
- (c) Contacts the treating physicians, (if applicable)

- (d) Is available to answer CMS questions
- (e) Prepares a report that summarizes the above; and
- (f) Offers a written medical opinion as to all the reasonably anticipated future medical needs of the claimant related to the claimant's work injury

(b) Understanding of Medicare covered items

(c) Rated age - if applicable

(d) Approved Annuity Plan - if applicable

B. Recommended that Medicare Set-Aside Trust be approved before the State W/C settlement approval - consider consulting with appropriate ALJ or Arbitrator

## **Key Contacts**

### Notify Medicare of WC Claim

1-800-999-1118  
MEDICARE-Coordination of  
Benefits Contractor  
MSP Claims Investigation Project  
P.O. Box 5041  
New York, NY 10274-0125

### Medicare Overpayments in WC Cases

Mutual of Omaha  
Attn: Medicare Secondary Payer  
P.O. Box 1602  
Omaha, NE 68101

### Medicare Set-Aside Requests

Centers for Medicare & Medicaid Services  
Division of Medicare Financial Management  
Attn: Doug Rundle (816) 426-6387  
601 E. 12<sup>th</sup> Street, Room 242  
Kansas City, Missouri 64106

Fax (816) 426-3760