

The presentation will begin at noon (CST)

Welcome

Protecting Your Client's Medicare Benefits



Craig Pawley
Vice President of Business Development
Cpawley@Medivest.com
949.632.0029

John Muir Jr
Settlement Advisor
Jmmuir@Ringleassociates.com
309.532.1691

THE MUIR ADVISORS
with RINGLER



Founded in 1996 celebrating our 25th year in business

Average employee tenure 8yrs+

Same ownership group since inception. Zero venture capital or outside investment

Pre & post-settlement solutions

“ Experience. Stability. Solvency. ”

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Products & Services

- 1 Professional Administration...
MSAs and/or customized medical custodial accounts
- 2 Medicare Self-Asides (MSAs)...
- 3 Lien Resolution...
Medicare, Medicare Advantage, Medicaid, Veterans/TriCare, FEHBA, ERISA, Hospital Bills, Private Party Liens
- 4 Medical Cost Projections...
- 5 Self-Administration Kit (SAK)
- 6 Trust Advisor Services

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Settling Cases with a Medicare Component

Things to Consider

- What kind of benefits is your client receiving?
- Are there any outstanding medical liens?
- Has Medicare paid for any treatment related to your case?
- What does future medical care look like?
- Is your client prepared to manage their future medical care?
- Are you protecting your client's future Medicare benefits?

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The Medicare Secondary Payer Statute

In 1980 Congress enacted the Medicare Secondary Payer (MSP) Statute (42 U.S.C. § 1395y(b)), giving Medicare rights as a Secondary Payer. The MSP and its regulations prohibit Medicare from making a payment where there is a primary payer involved.



 "No double-dipping"

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The Medicare Secondary Payer Statute

Types of insurance plans deemed primary to Medicare by the statute:

- Workers' Compensation
- Liability Insurance
- No-Fault Insurance
- Self-Insured Plans
- Automobile Insurance

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Complying with the MSP Statute is Mandatory

- ▶ Complying with the MSP statute regarding past and future medicals is not limited to WC claims
- ▶ CMS Stalcup Memo – 5/25/11
 - The law requires that the Medicare Trust Funds be protected from payment for future services whether it is a WC or liability case. There is no distinction in the law
 - There is no formal CMS review process in the liability arena as there is for WC. However, CMS does expect the funds to be exhausted on Medicare covered and otherwise reimbursable services related to what was claimed and/or released before Medicare is ever billed
 - Each attorney is going to have to decide, based on the specific facts of each of their cases, whether or not there is funding for future medicals and if so, a need to protect the Trust Funds



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KNOW THE RULES



Why is Medicare Interested in the Settlement?

- Medicare wants to make sure it is not paying for items when a primary plan (primary payer) is responsible for payment
- CMS wants to make sure that settling parties are not shifting the payment burden to Medicare
- Medicare wants to make sure that if it has paid for any items that are covered by a primary plan, it is reimbursed for those funds

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How Will Medicare Find Out About the Settlement?

- Effective July 1, 2009, the MMSEA requires that "applicable plans" must first determine whether a claimant (including an individual whose claim is unresolved) is entitled to Medicare benefits. The primary payer must then report the "required information," once the case is resolved, to the Secretary of the Dept. of Health and Human Services (Secretary of HHS) in the "form, manner, and frequency" the Secretary prescribes. (CMS is a regulatory body under HHS)
- If this information is not provided to Medicare in the form, manner, and frequency requested, Medicare may impose a fine of up to \$1000 per day, per claimant, as Civil Monetary Penalties (CMP's)
- The public comment period closed at the end of April 2020 on CMS's Proposed Rule Making for regulations that will implement the MSP's CMP provision, so these regulations are expected to be released soon



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Addressing Past Medicals on a Case – Medicare Lien

- Does the injured party have a Medicare lien?
- Once Medicare entitlement has been verified, initiate a Medicare lien investigation.
- Once a settlement has been reached, request an updated Medicare lien
- Once a final demand has been issued, it must be paid within 60 days to avoid penalties and interest

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When Should You Consider a MSA Allocation?

- The claimant is currently a Medicare beneficiary
- The claimant has applied for SSDI (Social Security Disability Insurance) or is in the process of applying
- The claimant has applied for SSDI and has been denied and anticipates reapplying
- The claimant is over 62.5 years of age and is Medicare Eligible
- The monetary value of the case

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Is a MSA Allocation Recommended?

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    graph TD
      Q1[Does the Settlement Close Future Medical Payments?] -- YES --> R1[A MSA Allocation is Recommended]
      Q1 -- NO --> Q2[Are ANY of the following true?  
✓ Is the Injured Person currently receiving Medicare benefits?  
✓ Have they applied (or re-applied) for Social Security Disability Insurance?  
✓ Are they at least 62.5 years old?]
      Q2 -- YES --> R2[A MSA Allocation is Recommended]
      Q2 -- NO --> R3[A MSA Allocation is NOT Recommended]
      Q2 -- Unsure of SSDI/Medicare Status --> R4[Unsure of SSDI/Medicare Status]
      R4 --> Note[If you are unsure of the injured person's SSDI or Medicare status, Medvest can verify it for you.]
    
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What is Need to Complete a MSA Allocation?

- Completed Referral Form
- Most recent 2 years of Medical reports
- Last 2 years of RX invoices (or confirmation that no RX invoices are available)
- Payment ledger showing individual TD, PD, and Medical payment (WC only)



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How does an annuity fund an MSA account



- Exhaustion Amount (Total MSA) is \$170,971
- Seed Money is \$21,596
- Annual Payment is \$5,975
- Cost is \$120,370
- Savings with an annuity versus paying the MSA as a lump sum is \$50,601
- Discount is 29%

MEDICARE SET-ASIDE ARRANGEMENT		
BENEFIT	COST	EXPECTED YIELD
Claimant: JOHN DOE Date of Birth: 06/19/65 Gender: Male		
MSA Seed		
MSA Seed	\$21,596.00	\$21,596.00
MSA Allocation		
Annual Income To Begin one year from funding date. \$5,975.00 per year payable 20 years, only if living.	\$98,774.00	\$149,375.00
TOTALS	\$120,370.00	\$170,971.00

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Rated Ages & Life Expectancy



- ▶ A Rated Age is an actuarial calculation, or a "impaired risk rating" which estimates that a given plaintiff may not live a normal lifetime.
- ▶ Rated Ages can be obtained using medical records from within the last **two years** which show medical conditions or history, or habits of the Claimant, which may reduce their life expectancy.

Medical History: Hypertension, Esophageal reflux, Chronic low back syndrome.
Surgical History: Laminectomy, Failed SCS trial at Loyola, Nerve spinal cord stimulator implantation 11/7/16.
Hospitalization/Major Diagnostic Procedures: Dementia Past Hospitalization.
Family History: No Family History documented.
Social History:
Drug/Alcohol: Alcohol Screen: Did you have a drink containing alcohol in the past year? No, Points: 0.
 Blood Drug Use: marijuana. He registered with the state. is approved for medical marijuana.
 He smokes 1/2 PPD.

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CMS Requirements

- Funds must be placed in an interest-bearing account (CMS Self-Administration Letter)
- A professional administrator must forward annual accounting statements to CMS (7/31/01)
- MSA funds should only be used for Medicare covered, case related items
- A person may self-administer his/her own MSA, but all the rules and regulations are the same (4/22/03)
- An annual self-attestation letter is required for self-administered MSAs
- Administration fees and attorney fees cannot be charged to the MSA account (5/7/04)



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Benefits of Professional Administration

- Claims re-pricing and **coordination of benefits** with Medicare and other payers
- Provide access to discount pharmacy and medical equipment & supply vendors
- Actively negotiate with medical providers to reduce procedure costs
- CMS liaison (i.e. annual reporting, coordination of account exhaustions)
- Ensure compliance with CMS rules and regulations. **Risk transfer**



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Food for Thought for Futures



On the Horizon

- Lawsuits currently taking place over past payments (liens) – might suits be brought for **post-settlement conditional payments in WC or liability?**

ProAdmin: The Key to MSP

- MSP Compliance heavily weighted toward distribution making decisions - **Professional Administration is the key**

If No MSA Then What?

- MSAs are not mandatory but are often the most conservative and accepted way to protect Medicare's future interests in settlements

Lien Resolution – More than Medicare

- Free up cash and attorney time – expand settlement pie for funding of futures. Pro Admin, or other use by plaintiff

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Q&A

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Vice President of Business Development
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John Muir Jr
Settlement Advisor
Jmmuir@Ringlerssociates.com
309.532.1691

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Thank You

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