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MEDICARE COMPLIANCE NEWSLETTER

FEBRUARY 3, 2010

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Stricker Case Update: A MUST READ for the Liability Industry

by Melisa C. Zwillig, J.D.

As you are probably aware, on December 1, 2009, the United States filed a Complaint against several claimants' attorneys, their law firms, Monsanto Company, Solutia, Inc., Pharmacia Corporation and their insurers seeking repayment of conditional payment claims related to a class action settlement which occurred in 2003. On January 28, 2010, the United States filed a Motion for Partial Summary Judgment on Liability ("MSJ") against a law firm that represented the plaintiffs in the underlying action, along with two of its partners. The MSJ was also filed against Monsanto Company, Solutia, Inc., and Pharmacia Corporation.

In the Memorandum in Support of the Motion for Partial Summary Judgment, ("Memorandum"), the United States alleged that 1) the plaintiffs in the underlying action, which included Medicare beneficiaries, asserted and released medical claims; 2) conditional payments were made by Medicare on behalf of the underlying claimants/Medicare beneficiaries; 3) Monsanto, Solutia and Pharmacia paid \$300 million in settlement of the claims in the underlying action; and 4) defendant attorneys and their firms received \$129 million as part of the underlying settlement. Accordingly, the United States claimed that the defendant attorneys, firms and companies named in the MSJ are liable as entities who received payment from a primary plan and are required to reimburse Medicare for the conditional payments.

In the Memorandum, the United States claimed that Medicare paid an enormous amount of money, \$67,156,770.01, for medical treatment on behalf of the underlying Medicare beneficiaries/claimants **"from January, 1991 to November 30, 2009."** The United States has requested interest plus **double** the amount of conditional payments in this case. The serious concern for the liability industry is the fact that **the United States appears to be seeking repayment of alleged conditional payments made on behalf of Medicare beneficiaries AFTER the date of the settlement, which occurred in 2003.**

There is no specific authority cited within the Memorandum under which Medicare and the United States claim entitlement to reimbursement for payments made by Medicare **after** the date of settlement. The significance of listing the dates during which the "conditional payments" for which the United States seeks reimbursement were made must not be undervalued or ignored. We have always advised that any and all conditional payment claim issues be resolved at the time of settlement in all liability cases involving Medicare beneficiaries. It is still our position that MSAs are not appropriate for all liability settle-

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ments involving Medicare beneficiaries and Medicare is limited in the time period for which it may seek reimbursement for conditional payments. In light of this recent Memorandum filed by the United States, however, parties to liability settlements involving Medicare beneficiaries who will likely need future medical treatment related to the injury at issue should at least consider designating in the Release a reasonable amount of the settlement proceeds to cover such expenses, at least until this issue is resolved by the Court.

Whether the MSJ filed by the United States in this case will be successful will not likely be determined for some time. We will continue to follow this case closely and keep you informed of any developments.

CARR ALLISON MEDICARE COMPLIANCE DEPARTMENT

ABOUT US

The Medicare Compliance Group at Carr Allison is dedicated to assisting clients across the country with Medicare Secondary Payer issues including Section 111 Reporting, Conditional Payment Claim issues and Medicare Set-asides. Our number one priority is and has always been providing exceptional client service. We are truly dedicated to serving our clients well and ensuring compliance with complex federal laws while saving clients as much money as possible. Every client receives individualized, personal attention from experienced attorneys and staff who are familiar with the details of each file. Our medical personnel are readily available to answer medical questions about allocation reports and our attorneys are eager to discuss claims and provide sound, quality legal advice. We believe in complete accountability and frequently provide detailed status updates to our clients on every file. We view our clients as partners and friends, not simply as file numbers or sources of revenue.

In an area that is constantly changing, we make complete Medicare compliance as simple and worry-free as possible. We stay informed of recent and upcoming changes and issues involving the Medicare Secondary Payer Act and make certain that our clients stay informed as well. We welcome the opportunity to serve you and look forward to demonstrating why Carr Allison is the right choice for your organization.

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- Providing Sound Legal Advice and Representation
- Obtaining CMS Approval of Settlements in Appropriate Cases
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