



CARR ALLISON

MEDICARE COMPLIANCE NEWSLETTER

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Medicare Files Lawsuit to Enforce Its Right to Reimbursement Against Liability Defendant Corporations, Their Insurers, Plaintiffs, and Plaintiffs' Attorneys

By Joseph Isbell, J.D.

In *U.S. v. Stricker et al*, CV-090PT-2423-E, filed December 1, 2009, in the U.S. District Court in Alabama, the Centers for Medicare and Medicaid Services ("CMS") and the Secretary of Health and Human Services, through the United States, initiated a lawsuit against defendant corporations, their insurers, plaintiffs, and plaintiffs' counsel to obtain recovery for conditional payments made pursuant to the Medicare Secondary Payer Act ("MSP"). While prior lawsuits have sought reimbursement from plaintiff's counsel for failure to repay Medicare (see, e.g., *U.S. v. Harris*, 2009 U.S. Dist. LEXIS 23956 (N.D. W. Va., decided March 26, 2009)), the *Stricker* case is the first which seeks reimbursement from ALL parties subject to MSP reimbursement obligations.

In *Stricker*, the plaintiffs settled their liability case against the defendant corporations in 2003 for approximately \$300 million. The complaint filed by the U.S. alleges that none of the 907 Medicare beneficiary plaintiffs reimbursed Medicare as they were legally obligated to do. Likewise, neither the plaintiffs' attorneys, the defendant corporations, nor their insurers researched Medicare's potential claims, notified Medicare of the settlement, or reimbursed Medicare for its conditionally paid claims. Therefore, the United States initiated suit against all parties for double the amount of outstanding liens. Interestingly, the complaint also seeks a declaratory judgment that future payments due under the settlement agreement must not be made until Medicare is first repaid for any conditional payments it has made on behalf of the beneficiaries.

Under the MSP, all parties are obligated to notify Medicare (and its contractors) of any settlement, plaintiff's judgment, or other award that involves a bodily injury claim asserted by a Medicare beneficiary. This obligation stems not only from the newly added Section 111 reporting requirements but also under the original MSP statute. Once Medicare is notified of a settlement, judgment or other award, it must also be reimbursed for its conditional payment claims.

We will be following the developments in this case and will keep you informed of the same. If you have any questions or need assistance with any Medicare Secondary Payer issue, please call or email us. The attorneys at Carr Allison are prepared to ensure that you are in compliance with the Medicare Secondary Payer Act.

Medicare Compliance Newsletter (Continued)

New Alerts for Liability Insurance (Including Self-Insurance), No-Fault Insurance and Workers' Compensation

The Centers for Medicare and Medicaid Services (CMS) held a teleconference on January 5, 2010, to discuss technical aspects of Section 111 Reporting. CMS discussed several new alerts which have been posted in the new section of the Mandatory Reporting Website titled "MMSEA 111 Alerts." These alerts and related links are described in more detail below.

A new technical alert was posted on December 23, 2009, regarding the addition of a DCN field to query files and the HEW software upgrade. On January 6, 2010, a new version of the HIPAA Eligibility Wrapper (HEW) software was made available. Version 2.0.0 includes updates and changes to the query file. While RREs can continue to use the previous version of HEW software, the query input and response file in Version 2.0.0 has been updated to include up to two optional document control number (DCN) fields. To view the revised record layouts and for additional information, see the following link:
<http://www.cms.hhs.gov/MandatoryInsRep/Downloads/NGHPAlertQueryHEW.pdf>

The technical alert regarding claim input field requirements dated December 23, 2009, addresses the following issues:

- Link for valid ICD-9 codes and additional information regarding the same
- Claim Input File Detail Record Fields 58-62 Related to Product Liability
- Additional Info Regarding Claim Input File Fields and Error Codes

The alert can be viewed on the MMSEA 111 Alerts section of the Mandatory Reporting Website or by clicking the following link:

<http://www.cms.hhs.gov/MandatoryInsRep/Downloads/NGHPAlertFieldReq.pdf>

On December 29, 2009, an alert was posted to provide registration assistance to RREs who are "foreign entities." A foreign entity is defined as an entity that does not have a U.S. address and/or a U.S. Tax Identification Number (TIN) or an Employer Identification Number (EIN). For additional information and to view the alert see the web address below:

http://www.cms.hhs.gov/MandatoryInsRep/Downloads/ForeignEntity_Alert122909.pdf

CARR ALLISON

MEDICARE COMPLIANCE DEPARTMENT

Co-Chairs of Medicare Compliance Department

Name	Telephone	Email
Ben Pugh, Partner	(205) 949-2940	bpugh@carrallison.com
Melisa Zwilling, Partner	(205) 949-2949	mzwilling@carrallison.com

Additional Attorneys

Adrienne Sawyer	(205) 949-2902	asawyer@carrallison.com
Jessica Silinsky	(205) 949-2981	jsilinsky@carrallison.com
Joe Isbell	(205) 949-2931	jisbell@carrallison.com
Kristi Hobbs	(205) 949-2975	khobbs@carrallison.com

Medicare Compliance Specialists

Vickie Bell	(205) 822-2006 ext 4046	vbell@carrallison.com
Victoria Brakhage	(205) 822-2006 ext 3066	vbrakhage@carrallison.com
Joshua Coker	(205) 822-2006 ext 3016	jcoker@carrallison.com
Cristen Merritt	(205) 822-2006 ext 4044	cmerritt@carrallison.com
Tiffany Cooper	(205) 822-2006 ext 4054	tcooper@carrallison.com
Lola Stark	(205) 822-2006 ext 4175	lstark@carrallison.com
Stephanie Mullins	(205) 822-2006 ext 4063	smullins@carrallison.com

Carr Allison
100 Vestavia Parkway
Birmingham, Alabama 35216
205-822-2006 phone
205-822-2057 fax

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