

Medicare Secondary Payer (MSP) Act: Who is Liable?

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Introduction

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3 OBLIGATIONS OF MEDICARE SECONDARY PAYER

1. MMSEA Section 111 Reporting;
2. Conditional Payments; and
3. Future Medicals/Medicare Set-Asides.



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Section 111 Reporting

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SECTION 111 REPORTING

THE BASICS

- 42 U.S.C. § 1395y(b)(8);
- Resolving Claims with Current Medicare Beneficiaries Involving Medical Expenses;
- Highly Technical.



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SECTION 111 REPORTING

THE DANGER

- \$1,000/Day/Claimant;
- No Penalties Assessed (Yet);
- New Civil Monetary Penalty Regulation.



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SECTION 111 CIVIL MONETARY

PENALTY REGULATION

Medicare Will Penalize When:

- Entity has not registered as RRE;
- RRE provides contradictory data to CMS when CMS seeks recovery; or
- RRE exceeds Medicare error tolerance thresholds.

Medicare Will Not Penalize When:

- Entity has registered as RRE and is reporting properly;
- RRE does not provide contradictory data to CMS when CMS seeks recovery;
- RRE does not exceed Medicare error tolerance thresholds; or
- RRE meets Good Faith Efforts exception.

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SECTION 111 REPORTING

WHO IS LIABLE?

- Carrier/Self-Insured is 100% Liable for Section 111 Non-Compliance.



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Conditional Payments

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CONDITIONAL PAYMENTS

THE BASICS

- 42 U.S.C. § 1395y(b)(2);
- Date of Loss to Date of Settlement/Judgment;
- Highly Technical;
- Multiple Contractors;
- Medicare A/B/C/D all in play.



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CONDITIONAL PAYMENTS

THE DANGER

- Lien Repayment x2;
- Interest;
- Double Damages;
- Treble Damages Plus Penalties (False Claims Act).



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CONDITIONAL PAYMENTS

EXAMPLES OF THE DANGER

Medicare A/B:

- Employer/Carrier named Debtor in all accepted WC and no-fault cases;
- Statute/Regulations permit Medicare to seek recovery directly from Carrier/Self-Insured in Auto and Liability cases;
- CMS can refer matters to USDOT or USDOJ if it wishes.

Medicare C/D (aka Medicare Advantage):

- Decade of litigation reveals Medicare C/D to be treated like Medicare A/B for MSP purposes;
- Medicare Advantage plans have shown willingness to collect directly from Carrier/Self-Insureds;
- Assignees like MSP Claims trying to act like Medicare Advantage;
- Hundreds of cases nationwide.

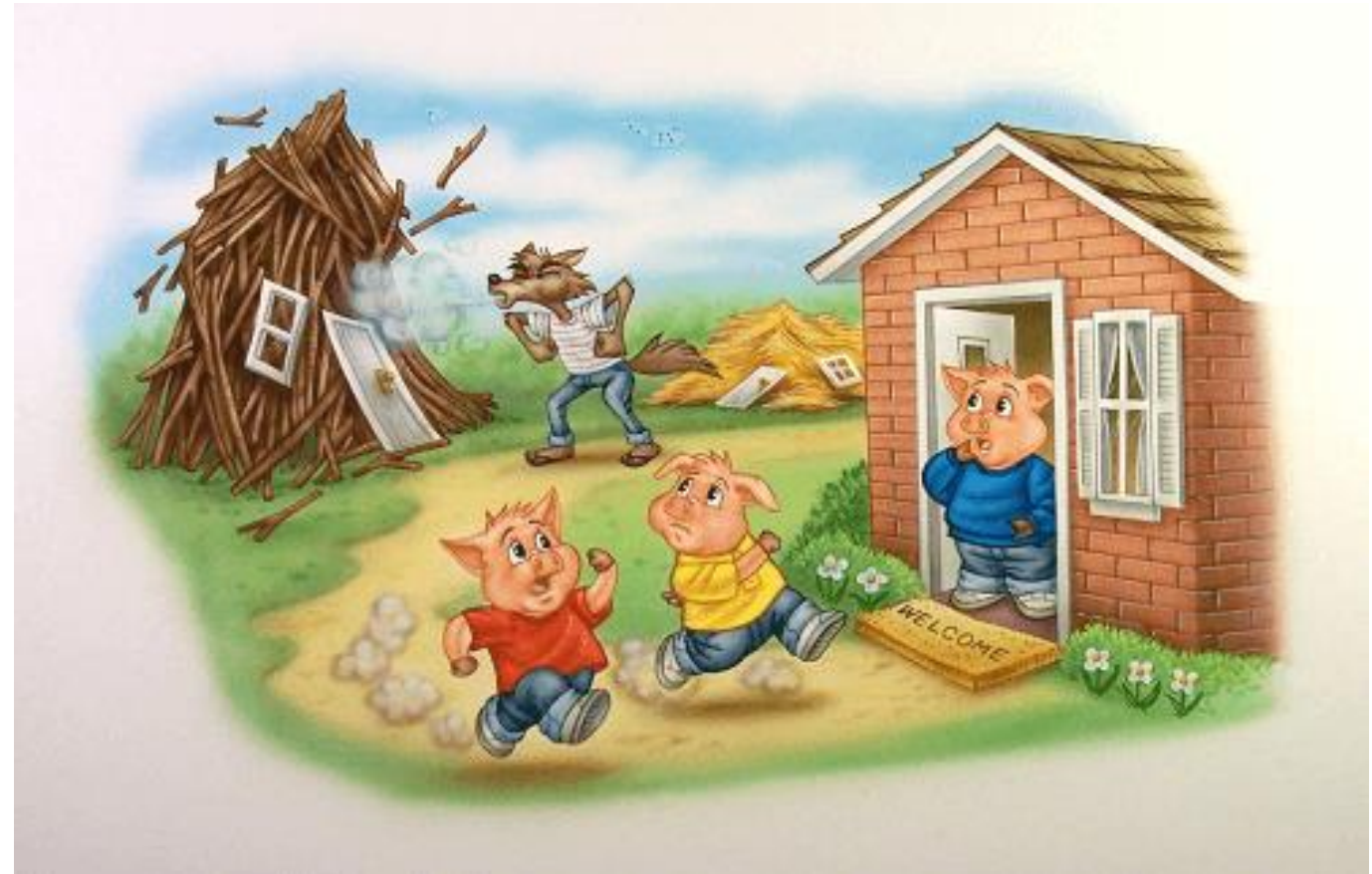
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CONDITIONAL PAYMENTS

WHO IS LIABLE?

- Carrier/Self-Insured can be 100% Liable for Conditional Payments.



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Future Medicals & Medicare Set-Asides (MSAs)

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FUTURE MEDICALS & MSAS

----- THE BASICS

- 42 U.S.C. § 1395y(b)(2);
- Date of Settlement going forward;
- Highly Confusing;
- When to Address;
- How to Address.



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FUTURE MEDICALS & MSAS

EXAMPLES OF THE DANGER

\$2,000,000,000.00

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FUTURE MEDICALS & MSAS

EXAMPLES OF THE DANGER

For Carrier/Self-Insured:

- If conditional payments (past) are not addressed, then Medicare can add future conditional payments made post-settlement to amounts owed;
- Assuming conditional payments (past) are addressed, then Medicare will be hard pressed to determine carrier/self-insured as the party “responsible” for the medical bill submitted post-settlement.

For the Claimant:

- Medicare’s recourse = denial of benefits or “pay and chase”;
- Under most settlement agreements, claimant becomes party “responsible” for all future medicals;
- Medicare will seek recovery from the party responsible for the specific bill;
- Under what circumstance would the carrier/self-insured be responsible at that point?

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FUTURE MEDICALS & MSAS

EXAMPLES OF THE DANGER

“Any claimant who receives a WC settlement, judgment or award that includes an amount for future medicals must take Medicare’s interest with respect to future medicals into account. If Medicare’s interests are not considered, CMS has a priority right of recovery against any entity that received any portion of a third-party payment either directly or indirectly.”

CMS WCMSA Reference Guide Version 3.0, October 2019

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FUTURE MEDICALS & MSAS

WHO IS LIABLE?

- Hard to See How Carrier/Self-Insured can be Liable for future medicals and MSA issues;
- Why?



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FUTURE MEDICALS & MSAS

EXAMPLES OF THE DANGER

Medical Approach

Vs.

Legal Approach

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Questions?

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Thanks!

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