

# Medicare Reporting in Liability and No-Fault Cases

By Karin M. Scheehle, ACP, MBA

A significant challenge facing those of us who work in a tort practice is in dealing with the statutory “superlien” held by Medicare relating to Medicare beneficiaries. Medicare’s lien rights affect case negotiation, settlement, and distribution in liability, no-fault, and workers compensation cases where the injured person receiving compensation as a result of the injury is a Medicare beneficiary. Federal statutes require Medicare beneficiaries to reimburse Medicare for any conditional payments (payments made to medical providers on account of the injury) while the legal case is pending.

Reporting, case management, and lien reimbursement for Medicare beneficiaries are handled through the Medicare Secondary Payer Recovery Contractor (MSPRC). Rules and timelines governing MSPRC procedures change regularly, requiring legal teams to keep up with current standards and procedures.

Dealing with MSPRC takes time and patience. Many responses from MSPRC

take more than 60 days. Consequently, open a liability and/or no-fault file early, keep on top of MSPRC’s stated time frames and follow up with

MEDICARE HEALTH INSURANCE  
1-800-MEDICARE (1-800-633-4227)

NAME OF BENEFICIARY  
**JOHN DOE**

MEDICARE CLAIM NUMBER  
**000-00-0000-A**

SEX  
**MALE**

IS ENTITLED TO  
**HOSPITAL (PART A)**  
**MEDICAL (PART B)**

EFFECTIVE DATE  
**01-01-2007**  
**01-01-2007**

SIGN HERE →

MSPRC if responses do not arrive within their stated time frame. Since obtaining Medicare’s lien demand can take in excess of 120 days from the time when the case is first opened, starting the process early can help parties have timely lien demand amounts to use during settlement discussions or mediation.

## Starting a Case with MSPRC

To start a case with MSPRC, the case must be opened with Medicare’s Coordination of Benefits Contractor (COBC) and with the MSPRC. After COBC opens the case, COBC will issue a Rights & Responsibilities letter. MSPRC currently issues a Conditional Payment letter 65 days after COBC issues its letter. The conditional payment letter is generated as a response to the initial representation/request letter (sent by the Medicare beneficiary’s attorney).

Fax the initial notice letter to the appropriate

MSPRC department requesting them to open a file and provide a conditional payment letter. This letter needs to include Medicare’s authorization form so MSPRC will talk to a representative of the beneficiary (be sure to use the most current form from MSPRC and not a standard medical authorization because these are often not accepted). A copy of MSPRC’s Consent to Release can be obtained from the following link: [http://www.msprc.info/forms/Consent\\_](http://www.msprc.info/forms/Consent_)

# MEDICARE

to\_Release.pdf and the Proof of Representation at the following link: <http://www.msprc.info/forms/ProofofRepresentation.pdf> The initial notice letter to MSPRC should include the name of the beneficiary, date of birth, date of injury/accident, HICN and SSN, and a Proof of Representation signed by the beneficiary and the beneficiary's attorney. A Consent to Release may also be provided along with the Proof of Representation. Faxing communications to MSPRC will reduce the time it takes to receive responses and the faxed documents are generally added to the beneficiary's MSPRC file within 48 hours. The type of injury should also be included in the notice letter to MSPRC. This will help MSPRC identify related bills.

The payments listed on the Conditional Payment letter from MSPRC should be carefully reviewed and payments not related to the incident should be objected to. Objections to conditional payments that are not case related should be made as early as possible in the lien resolution process, preferably before a demand letter from MSPRC is requested. MSPRC may require several months to process these objections and make revisions to their conditional payment total and/or demand. Be cautious. The conditional payment amount is

not MSPRC's guaranteed lien settlement amount. Only the lien amount indicated on MSPRC's demand letter is a guaranteed lien amount (not subject to revision) and this demand amount must be paid within 60 days of MSPRC's demand letter or interest to Medicare on the demand amount will begin to accrue.

## Open Case by COBC

Liability and/or no-fault (medpay) cases are sometimes opened by COBC whether attorneys request both or not. Be sure that both the liability and no-fault cases are closed when Medicare's lien is paid. Open no-fault cases may cause problems for beneficiaries when bills from medical providers are submitted for payment. Medicare may refuse to pay medical bills if there is an open no-fault case (even if the bills are unrelated to the open no-fault case). To close the no-fault case, provide MSPRC with their Nofault Case Closure form and a letter from the insurance company stating that the medpay has been exhausted. This MSPRC form can be found here: <http://www.msprc.info/forms/no-fault%20case%20detail%20sheet.pdf>. MSPRC may ask for a printout of payments made from the insurance company and/or a copy of the DEC page to show

how much medpay was available. If the medpay is not exhausted, MSPRC may require a letter from the beneficiary's doctor stating that the beneficiary is no longer receiving treatment relating to the case.

## Settling a Beneficiary's Case

Once a case is settled fax MSPRC's Final Settlement Detail Document form or a letter containing the same information to MSPRC. MSPRC will mail a demand letter to the beneficiary and the beneficiary's authorized representative (according to the Proof of Representation on file with MSPRC). MSPRC will match their procurement percentages with those charged by the attorneys and will reduce their lien demand accordingly. This reduction for procurement costs is required by statute. MSPRC's Final Settlement Detail Document can be obtained at the following link: [http://www.msprc.info/forms/Final\\_Settlement\\_Detail.pdf](http://www.msprc.info/forms/Final_Settlement_Detail.pdf)

For more information on dealing with Medicare liens, see the Attorney Tool Kit for liability insurance, no-fault insurance, and workers' compensation recovery. This tool kit can be found at: [http://www.msprc.info/index.cfm?content=includes/toolkits/attorney\\_nghp](http://www.msprc.info/index.cfm?content=includes/toolkits/attorney_nghp).

*continued on page 22*



continued from page 21

MSPRC and the SMART Act of 2012

On December 19, 2012, the United States House of Representatives passed the Saving Medicare and Repaying Taxpayers (SMART) Act as part of HR 1845. The SMART Act was introduced to address MSP compliance issues affecting claims practice. The SMART Act as passed by the House, affects primary payers in the following ways<sup>1</sup>:

- A new conditional payment resolution process including
- ability to determine conditional payment exposure before settlement
- access to reimbursement claim information through MSPRC website
- 65-day period within which website statement is final conditional amount
- extended appeal rights to challenge CMS determinations and shortened response periods

- Elimination of required use of Social Security and health identification numbers
- Section 111 reporting "safe harbor" when plaintiffs refuse to produce their SSN
- Low-dollar MSP compliance threshold exemption
- Three-year statute of limitations for all MSP claims
- Modification of Section 111's \$1,000 a day per claim

Wrapping it Up

Dealing with Medicare liens can be a challenging and frustrating process. By following Medicare's guidelines, providing appropriate authorizations and documentation, and by keeping on track of deadlines and due dates, much of the frustration can be avoided.

1 http://www.govtrack.us/congress/bills/112/hr1845/text

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COMMUNICATION CORNER

VIRGINIA KOERSELMAN-NEWMAN, ATTORNEY



Write the Right Word

Have a communication question? Submit it to the Communication Corner for an answer. Post your questions to the Facts & Findings discussion board on NALANet or send them to nalanet@nala.org. Choose the best answer in each of the following questions.

- 1. Unruly children are \_\_\_\_\_ of permissive parents.
a. Born b. Borne
2. Wylie's service to his church is \_\_\_\_\_.
a. Creditable b. Credulous
3. A teacher and a classroom \_\_\_\_\_ a learning environment.
a. Comprise b. Constitute
4. Jaime's dog will \_\_\_\_\_ down on voice command.
a. Lay b. Lie
5. I \_\_\_\_\_ seek the CP® certification as soon as I earn my degree.
a. Shall b. Will



ANSWERS: (page references are to the CLA Review Manual, 3d ed.)

1. A is correct. Born means to be brought into existence. Unruly children are born of permissive parents. Page 38.
2. A is correct. Creditable means worthy of praise. Wylie's service to his church is creditable. Page 39.
3. B is correct. Constitute means to establish or to make. A teacher and a classroom constitute a learning environment. Page 39.
4. B is correct. Lie means to be or to place oneself in a reclining position. Jaime's dog will lie down on voice command. Page 42.
5. A is correct. Shall is the first person future tense of the verb "to be." I shall seek the CP certification as soon as I earn my degree. Page 72.

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