



Exceeding Expectations, Delivering Results.

News and Alerts

January 2018

Consideration for Expansion of Medicare Set-Aside (MSA) Arrangements

On June 11, 2016, we notified you that CMS issued an alert regarding their intent to consider the review of Medicare Set-asides in both liability and no-fault cases. As you will recall, on October 26, 2017, we notified you of an alert confirming that CMS is continuing to consider implementation of a review process in these situations, something we believe further confirms the need to address and protect Medicare's future interests in liability settlements. As always, we will continue to monitor this situation and will let you know of updates as soon as they arise.

The CMS alert stated –

"The Centers for Medicare and Medicaid Services (CMS) continues to consider expanding its voluntary Medicare Set-Aside Arrangements (MSA) review process to include liability insurance (including self-insurance) and no-fault insurance MSA amounts. CMS will work closely with the stakeholder community to identify how best to implement this potential expansion of voluntary MSA reviews. Please continue to monitor CMS.gov for updates and announcements of town hall meetings in the near future."

In This Issue:

- **Expansion of MSA Arrangements**
- **CMS Awards WC Review Contract**
- **CMS Awards CRC Contract**
- **Medicare's Subrogation Right**

ALERT: CMS Awards Capitol Bridge LLC With Workers' Compensation Review Contractor Contract

On September 1, 2017, Capitol Bridge LLC secured the contract with the Department of Health and Human Services to become the new Workers' Compensation Review Contractor (WCRC). The WCRC reviews Medicare Set-aside proposals and independently prices future medical costs and prescription costs related to a work injury. The contract is valued at over \$60 million. When the prior contract was awarded in 2011, it was valued at about \$5 million. We are working to confirm the transition date as well as the changes that may be anticipated as a result of the transition. We will notify you once this information is confirmed.

CMS Awards Commercial Repayment Center Contract to Performant Financial Corporation

Performant Financial Corporation (Performant) announced on October 5, 2017, that it was awarded the Commercial Repayment Center (CRC) contract by CMS. In its role as the CRC contractor, Performant will seek to recover conditional payment claims when the claimant has other forms of insurance considered primary under the Medicare Secondary Payer Act. Since October 5, 2015, the current CRC contractor, CGI Federal, has sought recovery of conditional payment claims in workers' compensation and no-fault cases.

Performant previously has served as a Recovery Audit Contractor for CMS. Under the Recovery Audit program, Performant has focused on identifying and recovering overpayments made to Medicare providers and suppliers.

Performant is headquartered in Livermore, California, and has stated that it ultimately intends to staff the CRC with more than 250 employees operating out of Performant's offices around the country. Performant's press release discussing the CRC contract is available at <http://investors.performantcorp.com/news-releases/news-release-details/performant-awarded-cms-medicare-secondary-payer-commercial>.



Services

- *WC Medicare Set-Aside Allocations*
- *Liability Settlement Allocations*
- *Conditional Payment Claim Resolution*
- *Medicare Advantage Plan Solutions*
- *Prescription Drug Plan Negotiation*
- *Section 111 Reporting Services*
- *Policy & Procedure Guides*
- *Client Education Courses*
- *Pharmacist Prescription Reviews*

Recent Results:

- Appealed \$336,503.39 demand for reimbursement from CRC. CRC withdrew all claims and closed their file.

Client Savings = \$336,503

- File was referred to us for a second opinion after MSA allocation from non-law firm vendor was \$26,447. We obtained CMS approval for \$7,203.

Client Savings = \$19,244

- Successfully disputed Conditional Payment Claims of \$63,006.95 to zero.

Client Savings = \$63,006

State Court Refuses to Reduce Plaintiff's Economic Damages Award Due to Medicare's Subrogation Right

William Ashmore presented to Hartford Hospital for a non-emergency, planned procedure. It was during his hospital stay that he passed away as a result of the alleged negligence of the employees of the hospital. Suit was brought against the hospital by Mr. Ashmore's estate and \$75,000 in economic damages were awarded following a jury trial. The damages represented the amount billed to William Ashmore by Hartford Hospital (Defendant) for the hospital stay during which he passed away. The jury found that his passing was a result of the Defendant's negligent care.

William Ashmore was a Medicare beneficiary at the time of his hospital stay and the cost of the stay was paid by a Medicare plan. However, at the time of the present case, Medicare had not yet indicated an intention to seek reimbursement for the payments made. For this reason, the Defendant argued that the amount of damages should be reduced pursuant to a state law rule which accounts for collateral sources. However, the Plaintiff argues that Medicare has a right of subrogation as a matter of law and, as a result, the state law rule would not apply.

In reviewing the state law as well as the Medicare Secondary Payer Act (MSP), the Superior Court of Connecticut notes that it is not surprising that Medicare has not yet asserted a lien given that the procedure for which negligent care was provided was a planned procedure. However, the Court notes that upon receipt of this primary payment by the hospital, the Plaintiff is now subject to any liability to Medicare which may arise as a result of the payment. The Court held that its state law rule is not contingent upon the holder of a subrogation right asserting that right and denied the Defendant's motion to reduce the damages based upon collateral sources.

Want more of the latest Medicare Compliance updates?

Follow us online:

www.carrallisonmsa.com

On A Personal Note...

Please join us in congratulating our office family on their happy news!

*Congratulations to
Jessica Hurst on the birth of
her daughter, Adalyn, in
October 2017.*



*Congratulations to
Meggie Krombach on the
birth of her daughter,
Margaret, in November 2017*

We also extend a big congratulations to the other expectant parents in our office:

Amanda Black

Krista Stallworth

Mekenzi Burrows

Contact Us:

Melisa Zwilling
100 Vestavia Parkway
Birmingham, AL 35216
(205) 949-2949
mzwilling@carrallison.com

Visit us on the web at
www.carrallisonmsa.com

Required statement from the AL State Bar: No representation is made that the quality of legal services to be performed is greater than the quality of legal services provided by other lawyers. Any recoveries and testimonials are not an indication of future results. Every case is different, and regardless of what friends, family, or other individuals may say about what a case is worth, each case must be evaluated on its own facts and circumstances as they apply to the law. The valuation of a case depends on the facts, the injuries, the jurisdiction, the venue, the witnesses, the parties, and the testimony, among other factors.