

TWO NEW TOOLS FOR RESOLVING MEDICARE RECOVERY CLAIMS

© Erik S. Laakkonen



A major area of concern and a potential bar to meaningful settlement negotiations in claims where Medicare has asserted a right to reimbursement is that the final amount of a conditional payment cannot be released until after settlement has been reached or judgment has been entered. That has been the law since the Medicare Secondary Payer Recovery Contractor (“MSPRC”) was consolidated into one entity in 2006.

This is because the Medicare Secondary Payer Act (42 U.S.C. §1395y(b).) makes a settling defendant’s insurance company responsible to repay Medicare if the beneficiary does not repay Medicare within 60 days from receipt of the settlement or judgment proceeds – even if the beneficiary plaintiff has already been reimbursed. (42 C.F.R. § 411.24(i).) To help thaw this chilling prospect, the Centers for Medicare & Medicaid Services (www.msprc.info) have given us two new tools to resolve such claims:

The first new tool is the Self-Calculated Final Conditional Payment Amount. It becomes effective in February 2012 and it allows certain Medicare beneficiaries to obtain the final conditional payment prior to settlement. The beneficiary must calculate the conditional payment amount based on information gathered from the MSPRC, www.MyMedicare.gov, or “other claims information” available to the beneficiary. The MSPRC will issue a final conditional payment within 60 days, if it finds the amount to be accurate. There are some conditions:

1. It must be for a “physical trauma based injury;”
2. The total amount must be USD \$25,000 or less;
3. The date of incident must be at least 6 months before submitting the payment proposal; and
4. The beneficiary must confirm that treatment has been completed, no further treatment is expected, or that no related medical treatment has occurred at least 90 days before submitting the payment proposal.

The second new tool is the New Fixed Percentage Option for Medicare’s Recovery Claim. It became effective in November 2011 and it allows a fixed percentage option to beneficiaries who receive certain types of insurance payments of \$5,000 or less. This option can resolve Medicare’s recovery claim by paying a flat 25% of the gross settlement amount. This option must be selected before Medicare issues a demand letter or other request for reimbursement, and the beneficiary must not receive any other payments related to the incident.

CAVEAT: THE FOREGOING DOES NOT CONSTITUTE LEGAL ADVICE. PLEASE CONSULT AN ATTORNEY FOR INDIVIDUAL ADVICE REGARDING INDIVIDUAL SITUATIONS.

Erik S. Laakkonen, Esq. is an associate in the Indian Wells, California office of Kramer, deBoer, Endelicato & Keane, LLP. KDEK is an insurance defense firm with offices throughout California and Nevada. For more information about the firm, please see www.kdeklaw.com.