

## Your Medicare Compliance Advocates

### Recent Results:

- Obtained a 75% reduction of a lien when another non-law firm had previously said CMS would not reduce it

-CMS approval of a zero MSA with a total settlement of \$150,000.

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### Our Clients:

-*"I cannot thank you enough for your extensive knowledge on the subject of Medicare."*

-*"Thanks so much for your responsiveness in time and content."*

-*"You made this process so easy!!!!!!!!!!!!!! And that made my job so much easier, I cannot tell you how happy I was with you and everyone I came in contact with at Carr Allison."*

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### March 2015 News and Alerts

#### **CMS Issues Final Rule Implementing Conditional Payment Appeals Process for Applicable Plans**

On February 26th, 2015, CMS issued a final rule implementing provisions of the Strengthening Medicare and Repaying Taxpayers Act (the SMART Act), establishing a right of appeal and formal Medicare Secondary Payer (MSP) appeals process



for applicable plans. The appeals process is for situations when Medicare seeks to recover payments from applicable plans, including liability insurance (including self-insurance), no-fault insurance, and workers' compensation laws or plans.

Some things to note regarding the final rule:

- The applicable plan cannot appeal unless and until an initial demand has been issued.

- Medicare has the right to recover conditional payments from the beneficiary, the primary payer, or any other entity that has the proceeds from payment by the primary plan; therefore, Medicare's decision regarding the entity it is pursuing recovery from will not be subject to appeal.

- The right to appeal is limited to the identified debtor, not a potential identified debtor.

- The SMART Act provision amended only the MSP provisions for Medicare Part A and Part B (section 1862(b) of the Act) and does not apply to Part C or Part D plans pursuing an MSP based recovery.

These regulations will become effective on **April 28, 2015**. The posting on the Federal Register can be found [here](#).

#### **CMS Update: WCMSA Life Expectancy Calculations**

## Submit a File



Submit your files to us electronically by clicking [here](#).

As of April 1, 2015, CMS will begin referencing the *CDC's Table 1: Life Table* for the total population: United States, 2010, for WCMSA life expectancy calculations. A copy of the *CDC's 2010 Life Table* is available [here](#).

## CMS Issues Updated Section 111 NGHP User Guide

On February 2, 2015, CMS issued an updated Section 111 NGHP User Guide incorporating the following language from the August 19, 2014, Alert addressing liability cases involving exposure, ingestion, or implantation and December 5, 1980:



Any operative amended complaint (or comparable supplemental pleading) must occur prior to the date of settlement, judgment, award, or other payment and must not have the effect of improperly shifting the burden to Medicare by amending the prior complaint(s) to remove any claim for medical damages, care, items and/or services, etc.

*Where a complaint is amended by Court Order and that Order limits Medicare's recovery claim based on the criteria contained in this alert, CMS will defer to the Order. CMS will not defer to Orders that contradict governing MSP policy, law, or regulation.*

The August 19, 2014, Alert also provides that Medicare will assert a recovery claim if "[e]xposure, ingestion, or the alleged effects of an implant on or after December 5, 1980, is claimed, released, or effectively released in the most recently amended operative complaint or comparable supplemental pleading" (emphasis added). In addition, the Alert states that one of the conditions that must be met for Medicare to not assert a recovery claim is that "[e]xposure, ingestion, or an implant on or after December 5, 1980, has not been claimed in the most recently amended operative complaint (or comparable supplemental pleading) and/or specifically released" (emphasis added).

The new CMS User Guide does not include the underlined language above. However, we have contacted CMS and confirmed that this language was left out inadvertently and the August 19, 2014, alert is still in effect. We expect to see a new User Guide issued in the near future including the underlined language above and we will let you know when it has been issued. The current User Guide is available [here](#).



Confused by all the new CMS

Have a question?  
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Attorneys today!



guidelines? Stumped by  
Section 111?

Our knowledgeable staff of  
Attorneys are ready to help you  
navigate through the changing  
landscape of Medicare  
Compliance.

Give us a call or email us with  
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*The Alabama State Bar requires the following statement: "No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers. These 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."*

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