



Medicare Set-Asides

Presenters
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SOCIAL SECURITY DISABILITY, MEDICARE AND WORKERS' COMPENSATION SETTLEMENTS

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THE NIGHTMARE CONTINUES.....

- **APPLICANT BORN 7/15/40 ALLEGES INJURY AOE/COE ON 3/5/03 TO HER BACK WHILE EMPLOYED AS AN ASSISTANT MANAGER.**
- **APPLICANT WAS MEDICARE ELIGIBLE SINCE 1998.**
- **INJURY IS DENIED AOE/COE.**
- **CASE IS SETTLED 07/1/2009 FOR \$25,000.00 C&R WITH A THOMAS.**
- **C&R HAS A MEDICARE SET ASIDE FOR \$0 NEGOTIATED WITH CMS BY A THIRD-PARTY**
- **CMS ACCEPTS THE 0\$ SET ASIDE.**
- **CMS NOTICE SAYS “WE DON’T WANT FUTURE PAYMENTS FOR MEDICAL TREATMENT BUT WE DO WANT REIMBURSEMENT FOR ANY PRIOR TREATMENT.”**
- **NOW CMS IS SEEKING \$47,000.00 FROM THE APPLICANT, HER ATTORNEY AND SCIF**
- **SCIF FAILED TO NOTIFY CMS COBC AS AN RRE THAT A MEDICARE BENEFICIARY HAS A WCAB AWARD**



TWO PARALLEL UNIVERSES

- **SOCIAL SECURITY DISABILITY OFFSETS**
- **MEDICARE SECONDARY PAYOR ACT**

NOW, WE HAVE EFFECTIVE 07/01/2009:

- **THE MMSEA ACT OF 2007, SECTION 111, 42 USC 1395y(b)(8)**



AGED, BLIND AND DISABLED

- **12.4% GROSS WAGES (F.I.C.A.) DEDUCTIONS**
- **6.2% PAID BY EMPLOYER AND EMPLOYEE**
- **COVERS RETIREMENT, BLIND, SSD-I AND SSI PROGRAMS**



SOCIAL SECURITY RETIREMENT (AGED)

- **FULL BENEFITS AT AGE 65 (“RETIREMENT AGE”) IF BORN ON OR BEFORE 1938**
- **IF BORN AFTER 1938, “RETIREMENT AGE” IS LATER, UP TO AGE 67**
- **THERE ARE NO OFFSETS IF THERE IS A WORKERS’ COMPENSATION SETTLEMENT AFTER APPLICANT BECOMES ELIGIBLE FOR REGULAR SOCIAL SECURITY RETIREMENT BENEFITS**



SOCIAL SECURITY DISABILITY

- **SSD-I vs. SSI**
- **SSD “EARNINGS” AND “DISABILITY” REQUIREMENTS**
- **SSD-I REQUIRES 21 QUARTERS CONTRIBUTION IN THE 40 QUARTERS PRIOR TO THE ONSET OF DISABILITY (FIVE YEARS OF CONTRIBUTIONS IN LAST 10 YEARS BEFORE ONSET)**
- **PAYMENTS OF SSD PER MONTH EQUAL SAME AMOUNT AS IF APPLICANT REACHED REGULAR RETIREMENT AGE**
- **CURRENTLY SSD IS MAX OF \$2,500.00 PER MONTH FOR INDIVIDUAL, \$3,736.00 MAX FOR FAMILY**
- **APPLICANT CAN RETURN TO WORK AND REAPPLY FOR SSD WITHIN 60 MONTHS WITHOUT PREJUDICE OR KEEP WORKING AND EARN A NEW 21 QUARTER EARNINGS HISTORY**



MORE SOCIAL SECURITY DISABILITY

- **APPLICANT CAN EARN UP TO \$910.00 PER MONTH FOR A 9 MONTH “TRIAL WORK PERIOD” WITHOUT PREJUDICE TO SSD BENEFITS.**
- **LONG TERM DISABILITY (LTD) PLANS REQUIRE RECIPIENTS TO APPLY FOR SSD UNDER ERISA PLANS**
- **ERISA (EMPLOYEE’S RETIREMENT INCOME SECURITY ACT OF 1974)**
- **ERISA PLANS PAY 60% OR 70% OF BASE SALARY IF NO ONE ELSE PAYS**
- **SOME LTD PLANS ARE “INTEGRATED BENEFITS PLANS” WHICH ALLOW FULL CREDIT AGAINST WORKERS’ COMPENSATION BENEFITS**



LTD PLANS AND WORKERS' COMP

- **INTEGRATED BENEFITS PLANS MUST HAVE EMPLOYER'S BENEFITS COMMITTEE RESOLUTION ADOPTING PLAN THAT IS SUBSTANTIALLY SIMILAR TO WORKERS' COMPENSATION FOR THERE TO BE OFFSETS AGAINST WORKERS' COMPENSATION BENEFITS.**
- **HOWEVER, INTEGRATED PLAN CANNOT CHARGE THE EMPLOYEE ANY PREMIUMS FOR LTD COVERAGE THEREBY VIOLATING LABOR CODE SECTION 3751(a). APPLEBY vs. WCAB (PACIFIC BELL) 1994, 27 CAL.APP.4TH 189, 32 CAL. RPTR.2ND 375, 59 CAL. COMP. CASES 520.**



SSD IMPORTANT DATES

- **ONSET OF DISABILITY (USUALLY FIRST DATE OF TTD)**
- **ENTITLEMENT DATE:**
 - “BENEFITS BEGIN ON THE FIRST DAY OF THE SIXTH MONTH AFTER THE ONSET OF DISABILITY.”
 - E.G. ONSET DATE IS 1/15/07, ENTITLEMENT DATE IS 7/1/07.
- **RETROACTIVE BENEFITS ARE PAID BACK TO 7/1/07**
- **MEDICARE ENTITLEMENT DATE IS 24 MONTHS AFTER SSD ENTITLEMENT DATE**
 - PERSON IN E.G. IS MEDICARE ELIGIBLE AS OF 7/1/09.



MEDICARE A, B, C AND NOW D

- **2.9% GROSS WAGES, NO CAP.**
- **1.45% PAID BY EMPLOYER AND EMPLOYEE**
- **THIS PAYROLL DEDUCTION PAYS
MEDICARE PART A**
- **\$96.40 PER MONTH OPTIONAL PREMIUM
FOR MEDICARE PART B, DEDUCTED FROM
SSD OR REGULAR SSR BENEFITS**
- **\$32-\$35.00 PER MONTH PREMIUM FOR
MEDICARE PART D**



MEDICARE PART A

- **COVERS “MAJOR MEDICAL”**
- **HOSPITALIZATION**
- **SKILLED NURSING HOME CARE**
- **HOSPICE CARE**
- **\$1,068.00 DEDUCTIBLE FOR HOSPITALIZATIONS (REPEATS IF YOU ARE HOSPITALIZED AGAIN AFTER 60 DAYS)**



MEDICARE PART B

- **OPTIONAL COVERAGE - \$96.40 PER MONTH PREMIUM DEDUCTED FROM SSD**
- **PHYSICIAN OFFICE VISITS, DURABLE MEDICAL EQUIPMENT, OUTPATIENT SURGERIES, DIAGNOSTIC STUDIES, IMAGING STUDIES, IV MEDS**



MEDICARE CHOICE + (PART C)

- **MEDICARE HMO, COMBINES PARTS A AND B COVERAGE**
- **CAPITATED PLANS LIKE KAISER SENIOR PLAN (1997)**
- **FEE FOR SERVICE PLAN LIKE BLUE SHIELD/BLUE CROSS PPO**
- **MEDICARE RECIPIENT CAN CHANGE PLANS ONCE A YEAR**
- **“MEDIGAP” PLANS ARE OPTIONAL SUPPLEMENTAL PLANS YOU CAN BUY THAT PAYS DEDUCTIBLES AND CO-PAYMENTS.**



MEDICARE PART D Rx PLAN

- **OPTIONAL EXCEPT FOR MEDI-CAL (MEDICAID) RECIPIENTS WHO ARE AUTOMATICALLY ENROLLED**
- **\$32.00-\$35.00 PER MONTH PREMIUM**
- **CO-PAYMENTS FOR FIRST \$2,250.00 IN ANNUAL DRUG COSTS**
- **“DONUT HOLE” NO COVERAGE BETWEEN \$2,250.00 AND \$5,100.00 IN ANNUAL DRUG COSTS**
- **MEDICARE PAYS FOR 95% OF PRESCRIPTION DRUGS OVER \$5,100.00 AND RECIPIENT PAYS 5% CO-PAYMENTS.**
- **AT LEAST \$3,600.00 PER YEAR MEDICATION COSTS ARE NOT COVERED BY MEDICARE**



SSD GENERALLY

- **“DISABILITY”**: PERSON HAS MEDICALLY DETERMINABLE PHYSICAL AND/OR MENTAL IMPAIRMENTS THAT GIVEN THE CLAIMANT’S AGE, EDUCATION, OCCUPATIONAL HISTORY, MEDICAL CONDITIONS AND RESIDUAL FUNCTIONAL CAPACITIES, HE OR SHE IS UNABLE TO ENGAGE IN ANY KIND OF SUBSTANTIAL GAINFUL ACTIVITIES FOR AT LEAST TWELVE CONSECUTIVE MONTHS OR WHICH RESULTS IN DEATH. 42 USCA 416(I).
- AMA GUIDES AND “NON-EXERTIONAL FACTORS”
- ODAR HEARINGS
- SSI – WORKERS’ COMPENSATION CASES ALMOST ALWAYS WIPE OUT SSI BENEFITS



SSD OFFSETS, AN INTRO

- **SEE 42 USCA 424(a), 20 CFR 404.317 AND 404.408**
- **TTD RATES TODAY COVER 67% WAGES UP TO \$74,000.00**
- **BUT ONLY 104 WEEKS OF TTD FOR DOI ON OR AFTER 1/1/04.**
- **THERE IS MORE PRESSURE TO FILE FOR SSD SINCE THE MAXIMUM RATE FOR SSD IS NOW \$2,500.00 PER MONTH, AND ABOUT \$3,700.00 PER MONTH FOR FAMILY WITH MINOR CHILDREN.**



SSD OFFSETS – THE 80% RULE

- **SSD BENEFITS ARE REDUCED “IF SSD BENEFITS PLUS OTHER PUBLIC MANDATED BENEFITS EXCEED 80% OF THE CLAIMANT’S HIGHEST CALENDAR YEAR’S EARNINGS IN THE LAST 5 YEARS BEFORE THE ONSET OF DISABILITY.”**
- **HUH?**
- **PUBLICALLY MANDATED BENEFITS = SDI, WORKERS’ COMPENSATION INDEMNITY.**



THE 80% RULE

- **EXAMPLES**
- **\$30,000.00 PER YEAR, ETC.**
- **\$60,000.00 PER YEAR**
- **\$15,000..00 PER YEAR**
- **FEDERAL “POM” (PROCEDURE OPERATIONS MANUAL) REQUIRES SSA TO USE ONE OF THREE FORMULAS MOST FAVORABLE TO THE CLAIMANT**
- **IS A WORKERS’ COMPENSATION SETTLEMENT WAGE LOSS OR LOSS OF BODILY FUNCTIONS?**
- **TTD = WAGE LOSS, PD = LOSS OF BODILY FUNCTIONS DUE TO AMA GUIDES**



SOCIAL SECURITY ADDENDUM

ESSENTIAL ELEMENTS NEEDED IN AN SSD ADDENDUM:

- **APPLICANT'S PRE-INJURY MONTHLY EARNING CAPACITY**
- **APPLICANT'S AGE ON P&S DATE**
- **APPLICANT'S LIFE EXPECTANCY AS OF THE P&S OR SETTLEMENT DATE**
- **GROSS C&R AMOUNT**
- **PD RATING**
- **LESS DEDUCTIBLE AMOUNTS = NET PROCEEDS**
- **FUTURE MEDICAL COSTS NOT COVERED BY MEDICARE**
- **LIFE EXPECTANCY (IN MONTHS) MULTIPLIED TIMES PRE-INJURY EARNING CAPACITY = LOSS OF EARNINGS**
- **AMORTIZATION OF NET PROCEEDS OVER THE APPLICANT'S LIFE EXPECTANCY AS LOSS OF FUTURE EARNINGS CAUSED BY WORK RELATED IMPAIRMENT(S).**



WCJs AND SSD ADDENDUMS

- SHOULD WCJs PAY ATTENTION TO THEM?
- ISN'T IT BETWEEN THE APPLICANT AND SSA; THE WCAB AND DEFENDANTS HAVE NO INTEREST IN THEM?
- IS THE APPLICANT'S INFORMED CONSENT ENOUGH?
- SEE, SANTA MARIA BONITA SCHOOL DISTRICT vs. WCAB (RECINOS) 2003, 67 CAL. COMP. CASES 848.
- PARAGRAPH 11 OF THE NEW C&R
- ALLOCATION OF BENEFITS NEEDS TO BE EVIDENCE BASED FOR SSA APPROVAL.
- IF YOU IGNORE THE C&R ADDENDUM YOU MAY MAKE AN OTHERWISE ADEQUATE C&R INADEQUATE



MORE WCJs AND SSD ADDENDUMS

- **IF THE WCJ DOES NOT APPROVE ALLOCATION OF C&R PROCEEDS THEN SSA WILL USE WHOLE C&R AS SSD OFFSET AT THE TTD MAXIMUM WEEKLY RATE UNTIL THE TOTAL AMOUNT OF THE C&R IS “PAID OUT.”**
- **SSD BENEFITS GET REDUCED OR ELIMINATED AS A RESULT OF A C&R WITHOUT AN ALLOCATION OF BENEFITS**



THINGS NOT SUBJECT TO SSD OFFSETS

- **ATTORNEYS FEES**
- **VOCATIONAL REHABILITATION/SJDBs**
- **PENALTIES AND INTEREST**
- **RIGHT TO FILE PETITION TO REOPEN**
- **DEATH BENEFITS**
- **MILEAGE REIMBURSEMENT**
- **INSURANCE DEDUCTIBLES AND CO-PAYMENTS**
- **\$3,600.00 PLUS 5% OF PRESCRIPTION DRUGS OVER \$5,100.00 PER YEAR THAT ARE NOT COVERED UNDER MEDICARE PART D.**



BUT WAIT!

- **THERE IS NO OFFSETS AGAINST REGULAR SOCIAL SECURITY RETIREMENT BENEFITS BECAUSE OF A COMPROMISE AND RELEASE!**
- **BUT WATCH OUT FOR MEDICARE!!!!**

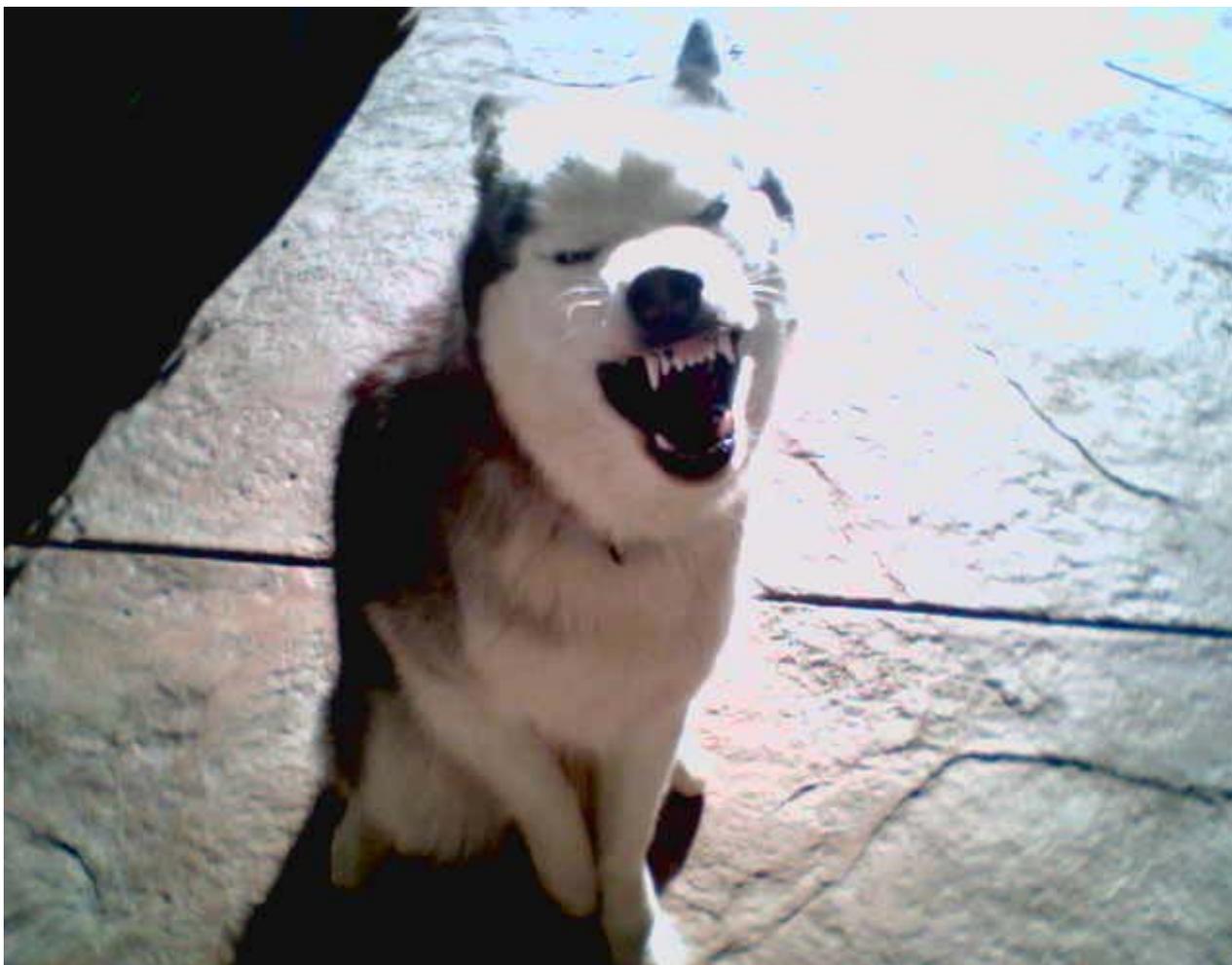


WCJ'S SUPPLEMENTAL ORDER OF APPROVAL OF A C&R

- **PROTECTS THE APPLICANT AGAINST AN SSD OFFSET**
- **MUST BE WRITTEN ON THE ORIGINAL OAC&R, NOT ON A “SUPPLEMENTAL ORDER” PAGE.**
- **EXAMPLE LANGUAGE: “THE COURT HAS CONSIDERED THE PROPOSED CHARACTERIZATION OF PROCEEDS IN THE SOCIAL SECURITY ADDENDUM ATTACHED TO THE C&R. THE COURT ADOPTS, INCORPORATES AND ACCEPTS THE PROPOSED ALLOCATION OF PROCEEDS AND FINDS THAT THE APPLICANT’S NET RECOVERY OF \$ _____ IS EQUIVALENT TO THE SUM OF \$ _____ PER MONTH FOR LIFE BECAUSE OF THE APPLICANT’S LOSS OF FUTURE EARNING CAPACITY THAT IS CAUSED BY HIS OR HER IMPAIRMENTS.”**
- **SHOULD DWC, WCAB OR COURT ADMINISTRATOR HAVE GUIDELINES?**
- **SOMETIMES YOU CANNOT AVOID AN SSD OFFSET.**



MEDICARE – THE FEAR FACTOR





MEDICARE – THE LAW

- **SECTION 1862(b)(2) SOCIAL SECURITY ACT (42 USC 1395y(b)(2)) SAYS MEDICARE MAY NOT PAY FOR MEDICAL TREATMENT THAT HAS BEEN MADE OR CAN BE REASONABLY EXPECTED TO BE PAID UNDER A WORKERS' COMPENSATION LAW OR PLAN.**
- **THE MEDICARE SECONDARY PAYOR ACT, 42 USC 1395y, APPLIES TO AUTO ACCIDENTS, PERSONAL INJURIES AND WORKERS' COMPENSATION CLAIMS WHERE THERE IS A "PRIMARY PAYOR."**
- **SECTIONS 1862(b)(5)(D) AND (b)(6) REQUIRE THAT CMS ASK BENEFICIARIES ABOUT PAYORS WHO MAY BE PRIMARY TO MEDICARE.**



MEDICARE – THE LAW

- **“MEDICARE, MEDICAID, SCHIP EXTENSION ACT OF 2007” (“MMSEA”)**
- **SECTION 111 OF THE MMSEA, 42 U.S.C. 1395y(b)(8) REQUIRES CLAIMS ADMINISTRATORS TO REPORT CLAIMANTS WHO ARE ELIGIBLE FOR MEDICARE WHO HAVE A PERSONAL INJURY, AUTO ACCIDENT OR WORKERS’ COMPENSATION CLAIM**
- **YOU BECOME THE “CMS POLICE?”**



MEDICARE SECTION 111 MSP MANDATORY REPORTING

GLOSSARY

- **“RRE” = RESPONSIBLE REPORTING ENTITY (CLAIMS ADMINISTRATORS)**
- **“NGHP” = NON-GROUP HEALTH PLAN (INCLUDES ANYONE WHO PAYS WORKERS’ COMPENSATION BENEFITS)**
- **“CMS” = CENTERS FOR MEDICARE AND MEDICAID SERVICES (PART OF DHHS)**
- **“COBC” = CMS COORDINATION OF BENEFITS CONTRACTOR WHO ENFORCES MSP PROVISIONS AND RECOMMENDS CMS APPROVALS OF MSA AGREEMENTS**



MEDICARE SECTION 111 MSP MANDATORY REPORTING

- **ABSOLUTELY NECESSARY WEBSITE:**

WWW.cms.hhs.gov/MandatoryInsRep

**THIS WEBSITE IS UPDATED EVERY MONTH AND
INFORMATION IN THIS PPT PROGRAM IS CURRENT
AS OF 1/18/2009**

**YOU ARE ADVISED TO HAVE A PERSON IN CHARGE
OF SECTION 111 COMPLIANCE**



MEDICARE SECTION 111 MSP MANDATORY REPORTING

- **“THE PURPOSE OF SECTION 111 REPORTING PROCESS IS TO ENABLE CMS TO PAY CORRECTLY FOR MEDICARE COVERED ITEMS AND SERVICES TO MEDICARE BENEFICIARIES BY DETERMINING PRIMARY AND SECONDARY PAYER RESPONSIBILITY.”**
- **RREs MUST SUBMIT INFORMATION TO THE SECRETARY IN A FORM, MANNER, AND FREQUENCY TO BE DETERMINED**



MEDICARE SECTION 111 MSP MANDATORY REPORTING

- **REPORTING IS REQUIRED FOR BOTH MEDICARE CLAIMS PROCESSING AND FOR MSP RECOVERY ACTIONS**
- **RREs WILL SUBMIT DATA ELECTRONICALLY TO THE COBC WHEN A CLAIMANT IS A MEDICARE BENEFICIARY (THINK, “EAMS”)**
- **TPAs ARE NOT RREs! THEY ONLY ACT AS AGENTS FOR AN RRE**
- **IF ENTITY IS SELF-INSURED FOR A DEDUCTIBLE BUT PAYMENTS ARE MADE BY INSURANCE CO., THE INSURANCE CO. IS THE RRE**
- **ALL RREs IN A SETTLEMENT HAVE TO REPORT**

MEDICARE – THE PROBLEM

- MEDICARE ADDENDUMS TO C&Rs MOSTLY MEAN NOTHING
- MEDICARE SET ASIDE ARRANGEMENT MAY OR MAY NOT BE NECESSARY
- “COMPROMISE” MEANS SETTLEMENT OF PAST MEDICAL TREATMENT THAT IS INCLUDED IN A SETTLEMENT
- “COMMUTATION” MEANS SETTLEMENT OF FUTURE MEDICAL TREATMENT
- A C&R IS BOTH UNDER FEDERAL LAW
- **MEDICARE SET ASIDE TRUSTS APPLY ONLY TO SETTLEMENT OF FUTURE MEDICAL TREATMENT**
- **ANY IDENTIFIED CLAIMS FOR PAST INJURY RELATED MEDICAL TREATMENT MUST BE REIMBURSED TO THE MEDICARE TRUST FUND**



MEDICARE SECTION 111 MSP MANDATORY REPORTING

- **IF RRE IS IN BANKRUPTCY, DOES CIGA HAVE TO REPORT?**
- **RREs CANNOT SHIFT RESPONSIBILITY TO REPORT TO AN AGENT BY CONTRACT OR OTHERWISE**
- **RREs MUST REGISTER WITH COBC SECURE WEB SITE BY 6/30/2009, REGISTRATION BEGINS 5/1/09**
- **RREs MUST IMPLEMENT A PROCEDURE IN THEIR CLAIMS RESOLUTION PROCESS TO DETERMINE WHETHER AN INJURED PARTY IS A MEDICARE BENEFICIARY AND MUST USE THE IW's SSN OR MEDICARE HEALTH INSURANCE CLAIM NUMBER (HICN)**



MEDICARE SECTION 111 MSP MANDATORY REPORTING

- **RRE's INITIAL FILE SUBMISSIONS MUST REPORT ALL CLAIMS WHERE IW IS OR WAS A MEDICARE BENEFICIARY THAT ARE RESOLVED OR PARTIALLY RESOLVED THROUGH A SETTLEMENT, JUDGMENT, AWARD OR OTHER PAYMENT ON OR AFTER 7/1/09 REGARDLESS OF WHETHER THERE IS AN AWARD FOR FUTURE MEDICAL TREATMENT.**
- **RRE MUST ISSUE QUARTERLY REPORTS FOR ALL PAYMENTS TO MEDICARE BENEFICIARIES WHERE THERE IS ONGOING RESPONSIBILITY FOR MEDICAL PAYMENTS (“ORM”)**



MEDICARE SECTION 111 MSP MANDATORY REPORTING

- **PAYMENT FOR A DEFENSE EVALUATION ONLY DOES NOT TRIGGER SECTION 111 FILING**
- **RREs MUST REPORT ALL SETTLEMENTS, JUDGMENTS OR AWARDS AS OF 7/1/09 WHERE THERE IS AWARD FOR FUTURE MEDICAL TREATMENT AND ANY CLAIMS PENDING A SETTLEMENT OR JUDGMENT AS OF 7/1/09 FOR ANY MEDICARE BENEFICIARY**
- **RREs MUST REPORT ON-GOING RESPONSIBILITY TO PAY FOR MEDICAL TREATMENT AND WHEN SUCH PAYMENTS ARE TERMINATED (AS IN A C&R)**



MEDICARE SECTION 111 MSP MANDATORY REPORTING

- **RREs HAVE AN EXTENSION UNTIL JULY-OCTOBER 2010 TO IDENTIFY IWs WHO HAVE FMTx AND WHO ARE MEDICARE BENEFICIARIES AS OF 7/1/09.**
- **RREs MUST MONITOR IWs WHO ARE NOT MEDICARE BENEFICIARIES AT THE TIME OF A SETTLEMENT, AWARD OR JUDGMENT WITH FMTx BUT WHO BECOME BENEFICIARIES PRIOR TO TERMINATION OF MEDICAL COVERAGE BY THE RRE.**
- **L.C. 5402(c) PAYMENTS TRIGGER RRE REPORTING EVEN IF INJURY IS EVENTUALLY DENIED AOE/COE, REPORTING OCCURS EVEN IF MTx IS TERMINATED AND IW IS MEDICARE BENEFICIARY**



MEDICARE SECTION 111 MSP MANDATORY REPORTING

- **RRE DOES NOT NEED TO REPORT IF A SETTLEMENT, AWARD OR JUDGMENT WITHOUT FMTx IF IW IS NOT A MEDICARE BENEFICIARY**
- **RREs MUST REPORT SETTLEMENTS, JUDGMENTS, AWARDS OR PAYMENTS REGARDLESS OF WHETHER OR NOT THERE IS AN ADMISSION OR DETERMINATION OF LIABILITY**
- **NO EXCEPTION FOR DE MINIMUS SETTLEMENTS**
- **CMS IS NOT BOUND BY ANY ALLOCATION OF SETTLEMENTS MADE BY THE PARTIES EVEN WHERE A COURT HAS APPROVED SUCH AN ALLOCATION.**



MEDICARE SECTION 111 MSP MANDATORY REPORTING

- **THERE IS NO AGE THRESHOLD FOR REPORTING UNDER 42 U.S.C. 1395y(b)(8)**
- **INACTIVE CASES MAY STILL BE REOPENED FOR FMTx SO THERE IS AN ON-GOING REQUIREMENT TO REPORT AND RRE CANNOT FILE A TERMINATION OF MTx REPORT**
- **FEDERAL LAW AND REGULATIONS PRE-EMPT STATE LAWS AND STATE REGULATIONS**
- **HAVE IN PLACE A DISCOVERY TOOL TO REQUIRE IWs TO DISCLOSE WHETHER OR NOT THEY ARE MEDICARE BENEFICIARIES**



MEDICARE SET-ASIDE AGREEMENTS

- **APPLICANT IS ALREADY ENTITLED TO MEDICARE (PART A, B, OR BOTH) REGARDLESS OF THE SETTLEMENT AMOUNT.**

OR

- **APPLICANT HAS A “REASONABLE EXPECTATION” OF MEDICARE ENROLLMENT WITHIN 30 MONTHS OF THE SETTLEMENT DATE AND SETTLEMENT IS GREATER THAN \$250,000.00**



WHAT IS A “REASONABLE EXPECTATION?”

- **APPLICANT HAS ALREADY FILED FOR SSD; OR**
- **SSD HAS BEEN DENIED BUT THE APPLICANT ANTICIPATES REFILING OR APPEALING THE DENIAL; OR**
- **APPLICANT IS 62 YEARS, SIX MONTHS OLD (30 MONTHS FROM RETIREMENT AGE) AT TIME OF C&R; OR**
- **APPLICANT HAS ESRD; OR**
- **APPLICANT IS UNDER 65 YEARS BUT HAS BEEN RECEIVING SSD FOR AT LEAST TWO YEARS; OR**
- **APPLICANT IS OVER 65 YEARS OLD AT TIME OF C&R.**



WHAT IS REQUIRED IN AN MSA?

- **APPLICANT'S HEALTH INSURANCE CLAIM NUMBER OR SSN IF NOT YET ELIGIBLE FOR MEDICARE.**
- **THE SAME INFORMATION IN A C&R (EACH PARTY'S ADDRESS), CLAIM NUMBER AND COUNSELS' ADDRESSES.**
- **TOTAL WORKERS' COMPENSATION SETTLEMENT AMOUNT.**
- **PROPOSED MSA AMOUNT.**
- **APPLICANT'S LIFE EXPECTANCY.**
- **LIFE CARE PLAN.**
- **COPY OF C&R WITH ADDENDUMS.**
- **CURRENT TREATMENT INFO.**
- **FUTURE TREATMENT INFO., INCLUDING MEDICATION NEEDS (MEDICAL REPORTS).**
- **APPLICANT'S MEDICAL RECOVERY PROGNOSIS.**



WHAT ELSE IS REQUIRED IN AN MSA?

- **AMOUNT OF FUTURE MEDICAL TREATMENT.**
- **PROPOSED MEDICARE SET ASIDE AMOUNT.**
- **ADMINISTRATOR?**
- **FEES?**
- **SET ASIDE FUNDS ARE ONLY USED FOR INJURY RELATED MEDICAL SERVICES THAT WOULD OTHERWISE BE COVERED BY MEDICARE AT THE TIME APPLICANT IS MEDICARE ELIGIBLE (NOT BEFORE).**
- **CAN YOU APPEAL A CMS DENIAL OF AN MSA? NO, SEE 42 CFR 405.926 AND 928.**
- **ADD SOME MONEY AND RE-SUBMIT IT.**



OTHER MSA CONSIDERATIONS

- **APPLICANT CAN BE THE ADMINISTRATOR.**
- **SEGREGATED INTEREST EARNING CHECKING ACCOUNT.**
- **APPLICANT PAYS FOR MEDICARE PART A, B AND D THEN MEDICARE PAYS.**
- **IT TAKES 120-150 DAYS FOR CMS TO APPROVE AN MSA.**
- **WCJs SHOULD APPROVE A C&R WITH AN MSA APPROVAL PENDING IF PARTIES AGREE: “APPLICANT AGREES TO ADD FUNDING TO THE MSA FROM HIS OR HER NET PROCEEDS FROM THE C&R IF CMS REJECTS THE MSA THAT WAS PREVIOUSLY SUBMITTED. APPLICANT AGREES TO HOLD DEFENDANT HARMLESS FROM ANY ADDITIONAL LIABILITY FOR THE MSA AMOUNT SUBMITTED AS OF THE DATE OF THE C&R APPROVAL.”**



ADDITIONAL MEDICARE INFO

- WWW.MEDICARE.GOV HAS A DROP-DOWN MENU FOR EVERYTHING THAT IS COVERED BY MEDICARE.
- MEDICARE COVERAGE INFORMATION:
1-800-MEDICARE
1-800-633-4227



MSAs AND MEDICARE PART D

- **12/30/2005 GUIDANCE MEMORANDUM**
- **MSAs HAVE TO TAKE INTO ACCOUNT MEDICARE'S INTEREST IN THE COST OF FUTURE PRESCRIPTION MEDICATION FOR WORK RELATED INJURIES.**
- **IF DOI IS LESS THAN TWO YEARS FROM THE DATE OF THE SETTLEMENT, THEN DOI YEAR TO DATE OF COST OF DRUGS MUST BE DISCLOSED AS PART OF THE MSA PROPOSAL.**
- **IF DOI IS MORE THAN TWO YEARS FROM THE DATE OF THE SETTLEMENT, THEN THE LAST TWO YEARS OF COSTS OF DRUGS MUST BE DISCLOSED AS PART OF THE MSA PROPOSAL.**



MSAs AND MEDICARE PART D

- **IF MSA IS SUBMITTED PRIOR TO 1/1/2006 THEN NO PART D PRESCRIPTION COSTS ARE REQUIRED AS PART OF THE MSA AMOUNT.**
- **IF MSA IS SUBMITTED ON OR AFTER 1/1/2006 THEN COSTS OF MEDICATION MUST BE INCLUDED IN THE MSA AMOUNT, SEPARATED FROM COVERAGES A AND B PARTS.**
- **BEFORE 1/1/2007, THE COSTS OF MEDICATION ARE ACTUAL COSTS (RETAIL, DISCOUNTED OR HOWEVER DEFENDANT PAID ACTUAL AMOUNTS)**
- **AFTER 1/1/2007, MEDICARE USES ITS OWN “MEDICARE RATES” OF MEDICATION COSTS REGARDLESS OF HOW MUCH DEFENDANT HAD PREVIOUSLY PAID.**
- **RECENT CASE WCMSA WAS \$235K, \$195K WAS FOR Rx**



WHAT SHOULD WCJs DO?

- **AD/COURT ADMINISTRATOR/WCAB SHOULD SET UP GUIDELINES OF WHAT KIND OF ADDENDUMS ARE ALLOWED TO BE ATTACHED TO A C&R.**
- **PARAGRAPH 11 OF THE NEW C&R FORM: ACCEPTING A LUMP SUM SETTLEMENT OF A WORKERS' COMPENSATION CLAIM MAY AFFECT, REDUCE OR ELIMINATE OTHER BENEFITS SUCH AS LTD, SOCIAL SECURITY DISABILITY AND MEDICARE ENTITLEMENTS.**
- **ADD AREA IN C&R THAT ALLOWS AN APPLICANT TO INITIAL THE FOLLOWING: "MEDICARE AND/OR MEDI-CAL HAVE NOT PAID FOR ANY OF MY MEDICAL TREATMENT FOR THE ALLEGED INDUSTRIAL INJURIES AS OF THE DATE OF THIS SETTLEMENT."**
- **"THE IW CERTIFIES UNDER PENALTY OF PERJURY THAT HE OR SHE IS NOT CURRENTLY A MEDICARE BENEFICIARY."**



WHAT SHOULD WCJs DO, PART 2?

- **ADDITIONAL LANGUAGE: “I AM/AM NOT CURRENTLY ELIGIBLE FOR MEDICARE OR MEDI-CAL COVERAGE.”**
- **IF MEDICARE HAS PAID FOR TREATMENT FOR ALLEGED INDUSTRIAL INJURY, MEDICARE HAS A LIEN AS A MATTER OF LAW AND ALL PARTIES AND COUNSEL ARE LIABLE FOR FAILING TO TAKE MEDICARE’S INTEREST INTO ACCOUNT FOR CONDITIONAL PAYMENTS.**
- **WCJ MAY SET MATTER FOR LIEN CONFERENCE IN ACCORDANCE WITH LABOR CODE SECTIONS 4904(a), 4903.05(b) AND 8 CCR 10250(a) AND ORDER APPLICANT’S COUNSEL TO GIVE NOTICE TO CMS, COBC.**



LOOK FOR RED FLAGS

- **IF APPLICANT IS ELIGIBLE FOR MEDICARE ON THE DATE OF THE SETTLEMENT (MEDICARE HAS A LIEN AS A MATTER OF LAW) – HAS MEDICARE PAID FOR TREATMENT? IF NO, YOU STILL NEED AN MSA REGARDLESS OF THE AMOUNT OF THE C&R. (BUT SEE RECENT \$25K MEMO).**
- **APPLICANT IS OVER 62.5 YEARS OF AGE ON DATE OF THE SETTLEMENT (OVER \$250K).**
- **APPLICANT IS GOING TO RECEIVE SSD WITHIN TWO YEARS FROM THE DATE C&R IS APPROVED (OVER \$250K).**
- **APPLICANT IS CURRENTLY APPEALING AN SSD DENIAL. (OVER \$250K)**
- **APPLICANT IS GETTING SSD AT TIME OF C&R APPROVAL OR WITHIN TWO YEARS BEFORE DATE OF APPROVAL (BETWEEN \$25K AND \$250K).**
- **C&R IS OVER \$250,000.00 AND C&R APPROVAL IS WITHIN 30 MONTHS OF BECOMING ELIGIBLE FOR MEDICARE.**



IF YOU DO NOT CARE...

- **MEDICARE WILL NOT COVER PARTS OF BODY INJURED CLAIMED IN THE WORKERS' COMPENSATION CASE.**
- **MEDICARE WILL USE THE ENTIRE C&R AMOUNT AS THE "SET ASIDE" AMOUNT TO COVER FUTURE MEDICAL TREATMENT FOR PARTS OF BODY INJURED.**
- **MEDICARE WILL SEEK REIMBURSEMENT FOR PRIOR CONDITIONAL PAYMENTS FROM THE APPLICANT, HIS ATTORNEY, THE INSURANCE COMPANY AND ITS ATTORNEY.**
- **\$1,000.00 PER DAY FINE PER IW WHO IS MEDICARE BENEFICIARY AND RRE FAILS TO FILE REPORT TO COBC**



WORSE CASE SCENARIO

- **WORSE CASE SCENARIO IS NO SSD ADDENDUM AND NO MSA IN A LARGE C&R. APPLICANT COULD LOSE SSD PAYMENTS BASED UPON WEEKLY TTD RATE FOR ENTIRE C&R AMOUNT AND MEDICARE WILL NOT COVER FUTURE MEDICAL TREATMENT FOR PARTS OF BODY INJURED IN WORK RELATED INJURY AND MEDICARE WILL SUE THE APPLICANT, HIS OR HER ATTORNEY, RRE AND ITS ATTORNEY FOR PAST TREATMENT COSTS.**
- **RRE GETS FINED BY THE FEDS FOR ITS FAILURE TO REPORT IW WHO ARE MEDICARE BENEFICIARIES.**



SOME EXAMPLES – QUESTION #1

- 1. 63 YEAR OLD WITH A \$100,000.00 C&R, NOT MEDICARE ELIGIBLE UNTIL 24 MONTHS AFTER C&R APPROVAL.**



ANSWER #1

**1. NO MSA, NO MEDICARE LIEN FOR
PRIOR TREATMENT, NO RRE
REPORTING REQUIRED**



QUESTION #2

**2. 68 YEAR OLD WITH A \$40,000.00 C&R
WITH A THOMAS FINDING.**



ANSWER TO QUESTION #2

**2. YES, MSA; YES LIEN FOR PRIOR
TREATMENT, YES RRE REPORTING**



QUESTION #3

3. 68 YEAR OLD WITH A F&O THAT SAYS “TAKE NOTHING” BECAUSE CLAIM OF INJURY WAS NON-INDUSTRIAL.



ANSWER TO QUESTION #3

3. NO MSA; THERE MAY BE LIEN FOR PRIOR TREATMENT BUT CMS RECOGNISES WCJ's "TAKE NOTHING." PROBABLE RRE REPORTING BECAUSE MED Tx "TERMINATED."



QUESTION #4

**4. 45 YEAR OLD WITH A \$300,000.00
C&R WHO HAS FILED FOR SSD BUT
HAS BEEN DENIED SSD.**



ANSWER TO QUESTION #4

**4. YES, MSA; NO MEDICARE LIEN FOR
PRIOR TREATMENT, YES RRE
REPORT IF IW BECOMES MEDICARE
BENEFICIARY**



QUESTION #5

**5. 45 YEAR OLD WITH A \$300,000.00
C&R WHO IS AWARDED SSD WITHIN
24 MONTHS BEFORE C&R APPROVAL.**



ANSWER TO QUESTION #5

5. YES, MSA; YES LIEN FOR PRIOR TREATMENT, YES RRE REPORT.



QUESTION #6

**6. 45 YEAR OLD WITH A \$100,000.00
C&R WHO IS AWARDED SSD WITHIN
24 MONTHS BEFORE C&R APPROVAL.**



ANSWER TO QUESTION #6

6. NO MSA NEEDED, THERE MAY BE LIEN FOR PRIOR TREATMENT, NO RRE REPORT.



QUESTION #7

**7. 45 YEAR OLD WITH A \$100,000.00
C&R WHO IS AWARDED SSD WITHIN
24 MONTHS AFTER C&R APPROVAL.**

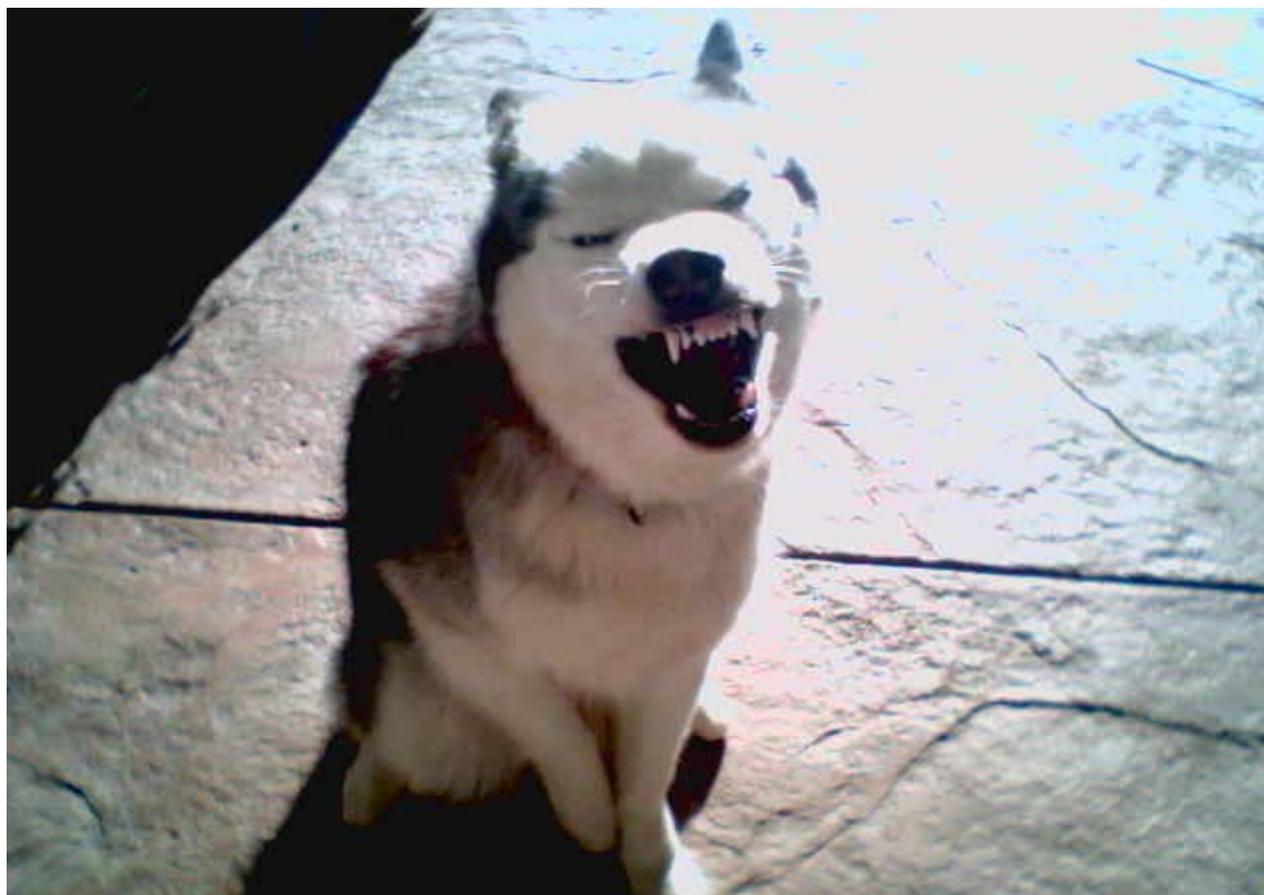


ANSWER TO QUESTION #7

**7. NO MSA NEEDED, NO LIEN FOR
PRIOR TREATMENT, NO RRE REPORT.**



THE DOG WAS JUST YAWNING...





.....WERE YOU?

■ **THANK YOU FOR YOUR ATTENTION!**

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