

November 2010

# NOVARE Newsletter

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## Articles:

- What's New with Mandatory Insurer Reporting?
- What's new with the MSPRC (conditional payments)?

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## What's New with Mandatory Insurer Reporting?

The new User Guide (version 3.1) has been published to the Mandatory Insurer Reporting website:

<http://www.cms.gov/MandatoryInsRep/Downloads/NGHPUserGuideV3.1.pdf>

CMS is currently processing early claim input files from RREs (Responsible Reporting Entities) that have completed testing, with the start of mandatory reporting set to occur during the first quarter of 2011.

A number of alerts have been posted to the MMSEA website. Please go to [http://www.cms.gov/MandatoryInsRep/09\\_Alerts.asp#TopOfPage](http://www.cms.gov/MandatoryInsRep/09_Alerts.asp#TopOfPage) to review these alerts.

"Alert" topics include direct data entry, clinical trials, risk management write offs, RRE compliance, and "who must report".

**Direct Data Entry:** For small reporters (less than 500 reports per year), there is now the capability to register to directly enter claims into the secure website. Reporting under the DDE option will be available January 2, 2011.

### Other issues:

- TPOC (Total Payment Obligation to Claimant) does not have to be reported if ORM (Ongoing Responsibility for Medicals) is already reported.
- The "touchstone of recovery" is medicals being "claimed or released." Medicare Secondary Payer does not require Medicare to prove causation. CMS is not bound by the allocation of the parties.
- A one time payment for a defense evaluation is not reportable under Section 111.
- At this point, CMS says they are issuing warnings or "compliance flags" only and there are no guidelines in place for penalties.
- CMS recommends documenting and keeping record of attempts to get claimant's social security numbers – this shows a good faith effort on the part of the RRE.

## What's new with the MSPRC?

As of September 30, 2010, the MSPRC mailing address and the MSPRC fax number have changed. Here are the new mailing address and fax number:

### By Mail:

Non-Group Health Plan (NGHP) Inquiries (e.g. all NGHP checks and inquires including Liability, No-Fault, Workers Compensation, Congressional, FOIA, Bankruptcy, Liquidation Notices and QIC/ALJ)

**MSPRC - NGHP**  
P.O. Box 138832  
Oklahoma City, OK 73113

### By Fax:

MSPRC Correspondence

(On your fax coversheet, please identify your correspondence as GHP or NGHP)

**405-869-3309**

Many general questions can be answered on [www.msprc.info](http://www.msprc.info). This website includes a wealth of information and is updated as new tools and resources are available to assist you in the recovery process.

**LEGAL BRIEFS – *and recent updates***

Several cases have affirmed the Centers of Medicare and Medicaid Services (CMS) are intent on ensuring Medicare Secondary Payer Compliance for all applicable parties. These Court decisions are evidence of the current challenges in settling claims when complying with the Medicare Secondary Payer statute. It is paramount these issues are resolved at the time of settlement. We believe the new aggressive approach Medicare is taking to seek recovery for conditional payments, and their requirements to allocate for future applicable medical exposure, confirms the necessity of partnering with champions in the Medicare Secondary Payer compliance arena. Novare offers a seamless solution to MSP compliance.

**Bradley v. Sebelius**

This was a nursing home malpractice case in which resulted in wrongful death. CMS paid \$38,875.08 in conditional payments and made a demand for \$22,480.89 after deducting procurement costs. The probate court determined that the total settlement represented approximately 2% of the overall value of the claim and reduced Medicare's right to reimbursement to \$787.50. Medicare refused to accept the authority of the probate court. Administrative remedies were exhausted, bringing the case to district court. District court ruled in favor of Medicare. **On appeal, the Eleventh Circuit disagreed, and decided that CMS was bound by a state court decision allocating the judgment, and that it could not recover the MSP claim from other family members who were allocated a percentage of the settlement by a state court.**

**US v. Stricker**

The United States exercised their right to seek recovery of conditional payments from both the liability carrier and the plaintiff's counsel. In the U.S. Court action, United States of America v. James J. Stricker, et al, the U.S. based their right of recovery argument on the Medicare Secondary Payer statute. The defendant and carrier did not designate a particular dollar award to a specific plaintiff; hence there was no report to CMS of those plaintiffs who were Medicare beneficiaries, nor was there a component of the final settlement allocated for Conditional Payments/Medicare Lien resolution. The United States' position was they were entitled to reimbursement with the final settlement award monies in relation to the individual plaintiffs in the Suit that were eligible Medicare beneficiaries. Medicare argued they should have been considered Secondary Payer and reimbursed out of final settlement award. The U.S. went further to seek interest and penalty, and requested the defendants must submit notice of projected future Medicare-covered expenses for those MC beneficiaries pursuant to 42 C.F.R. 411.25. **This case was dismissed, citing a six year statute of limitations in October of 2010. On November 3, 2010, the court granted a motion to reconsider under the plaintiff's accrual theory.**

**Hadden v. US**

Mr. Hadden was injured by an electric truck, which veered to miss an unidentified vehicle that ran a stop sign. He filed a personal injury lawsuit and settled with the electric company for \$125,000. The claimant repaid Medicare for over \$62,000 in conditional payments for his medical care. He then requested a complete waiver, stating that he had not been made whole by the settlement, and due to the reasonable allocation of fault (in this case 10%) to the electric company, CMS should not recover more than 10% of the conditional payments. CMS denied his request and the court stated that since the case settled and was not tried, an allocation of liability would be speculative. The court upheld that the CMS lien should not be reduced. **A hearing was held on October 13, 2010 before the 6<sup>th</sup> Circuit Court of Appeals – the result is pending.**

## Your MSA questions answered....

### How does a claimant become eligible for Medicare?

Generally, a claimant is eligible for Medicare if they or their spouse worked for at least 10 years in Medicare-covered employment and they are 65 years or older and a citizen or permanent resident of the United States. If the claimant isn't yet 65 years old, they might also qualify for coverage if they have a disability or with End-Stage Renal disease (permanent kidney failure requiring dialysis or transplant).

**Here are some simple guidelines. A claimant can get Part A at age 65 without having to pay premiums if:**

- They already get retirement benefits from Social Security or the Railroad Retirement Board.
- They are eligible to get Social Security or Railroad benefits but haven't yet filed for them.
- They or their spouse had Medicare-covered government employment.

**If a claimant is under 65, they can get Part A without having to pay premiums if they have:**

- Received Social Security or Railroad Retirement Board disability benefits for 24 months.
- End-Stage Renal Disease and meet certain requirements.



### How do I report a case to the COBC?

**Always contact the COBC first whenever you have a pending Liability, No-Fault, or Workers' Compensation claim.**

#### **By Telephone**

COBC Call Center:

1-800-999-1118

Hours of Operation: Monday –Friday 8am-8pm (ET)

#### **By Mail** -General Inquiries

MEDICARE–Coordination of Benefits

P.O. Box 33847

Detroit, MI 48232

**Be prepared to provide the COBC with the following information:**

•**Beneficiary Information:** Beneficiary's Name, Health Insurance Claim Number (HICN) or SSN, Beneficiary's Gender and Date of Birth, Beneficiary's Address and Phone number

•**Case Information:** Date of injury/accident, date of first exposure, ingestion or implant, Description of alleged injury or illness or harm, Type of Claim (Liability insurance, No-Fault insurance, Workers' Compensation), Insurer/Workers' Compensation name and address

•**Representative Information:** Representative/attorney name, Law Firm name if the representative is an attorney, Address and phone number



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**We're on the Web!**

Visit our site at:

[www.novarenetwork.com](http://www.novarenetwork.com)

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## Novare: Your MSP solution

Novare consistently provides solutions for Medicare Secondary Payer compliance with quality Medicare Set Aside reports and MMSEA reporting.

Our Medicare Set Aside reports are completed by nurses that are MSCC certified and are reviewed by our PharmD to assure the best prescription allocation costs for our clients.

Medicare Agent Reporting Services include up-front consultation to assist with registration, retrieving query files, importing files from the RRE, editing files for mandatory data elements, enabling interface to correct missing elements, transmitting the final report file to CMS, and sending Medicare's acknowledgement to the RRE.

### Novare Medicare Set Aside Service Commitment:

- MSCC Professional Nurses complete the MSA process to include on-going communication with the client to move the file to settlement
- PharmD reviews and prices all prescriptions, including off label review
- Novare MSA reports meet CMS requirements, resulting in high CMS Submission rate
- Turnaround time is 10 days
- All Medicare Set Aside reports are one flat rate with NO HIDDEN FEES and NO CHARGE FOR RUSH CASES

### *About Our Organization..*

Novare is committed to efficient and effective cost containment with a high responsibility to quality, service and local representation. Our services are uniquely customized to meet your specific needs.

Our staff is highly professional and among the most experienced in the industry. We gauge our success by our customers' satisfaction.

