



NAMSAP

National Alliance of Medicare Set-Aside Professionals

Quarterly Newsletter

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NAMSAP is the only non-profit association exclusively addressing the issues and challenges of the Medicare Secondary Payer Statute and its impact on workers' compensation and liability settlements. Through the voluntary efforts of our members, NAMSAP is a forum for the exchange of ideas and is a leading resource for information and news in this constantly evolving area of practice. The collective knowledge of our members and NAMSAP's resources will provide you with the ingredients essential to your success!

PRESIDENT'S LETTER

Dear NAMSAP Member,

Greetings! What a wonderful time to be a part of this dynamic industry! It is time once again to begin planning your trip to join us at the upcoming 9th Annual NAMSAP Annual Meeting and Education Conference. This meeting will be held in Baltimore, Maryland at the Hyatt Regency Inner Harbor from April 25-26, 2013.

Our industry is changing and NAMSAP needs your support now more than ever. NAMSAP has always been your partner in education by providing you with valuable continuing education opportunities that have kept you up to speed with the latest industry updates, but our role as an organization is changing whether we like it or not. Of course we will continue to provide you with the educational agendas you have grown accustomed to by way of our Annual Meetings, Webinars, and are newly introduced Mid-Year Workshops, but we need to do more and we need your help to do it.

We are urging our members to not only join us in Baltimore, but we are asking you to give of your resources in support of furthering our goals at NAMSAP. As you all know, we are the only association whose membership exclusively addresses the issues and challenges of the Medicare Secondary Payer (MSP) Statute, and it's impact on workers' compensation and liability settlements. We no longer have the luxury of sitting idly by while CMS implements policies that directly affect our day-to-day professional lives. As MSP professionals, we owe it to ourselves to become more involved and make sure our voices are heard and considered as our industry moves forward.

In order to provide this influence, we are asking for your financial support at the upcoming Annual Meeting and Educational Conference in Baltimore. We have changed our sponsorship and exhibitor procedures slightly, and are asking our members to consider partnering with NAMSAP as an investor in the future of our industry. We will do this together rather than unilaterally. Changes are on the horizon whether we like it or not, and NAMSAP needs your support to effect these changes and lead our industry to the next level!

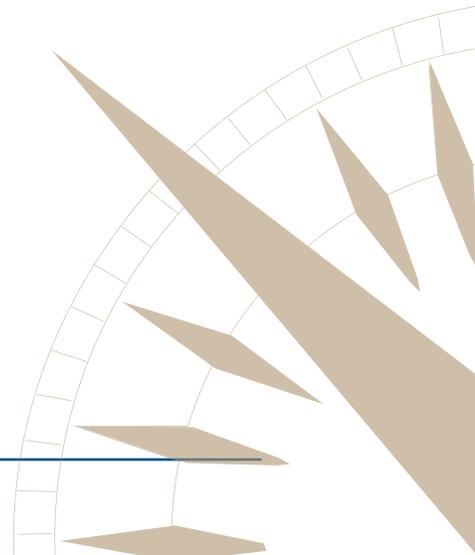
With Warmest Regards,



Michael Westcott, President



Douglas L. Shaw, Vice President



CASE LAW CORNER

By Rochelle L. Lefler, JD, RN

Hello everyone! Below are some cases discussed within our industry including our first legal roundtable. As always, we extend our thanks to those members for sharing their legal insights with us.

For those of our members who could not attend the legal roundtable session, the case of Salveson v. Sebelius, a South Dakota District case, was discussed. This case is significant for its analysis of past conditional payments under the MSP statute, apportionment arguments, and related claims. On December 20, 2004, claimant Betty Salveson went in for hernia surgery. During the surgery the bowel was nicked resulting in subsequent infections, sepsis and the need for subsequent surgery. The claimant filed a malpractice action and settled her claim for \$621,000 in 2008. The MSPRC originally indicated \$ 120,715.88 was owed for past conditional payments but subsequently readjusted their figure to \$110,864 .23. This amount was paid by the Claimant pending appeal in order to avoid accrual of interest. The claimant did not claim financial hardship and exhausted all administrative remedies before the court took jurisdiction of the matter. In her argument regarding waiver or alternatively, reduction of the reimbursement, the claimant argued that CMS was not entitled to reimbursement as it could not distinguish negligent medical expenses (malpractice suit) from non negligent expenses (those naturally occurring as a result of the hernia/first surgery). Thus the physicians' insurers were not "responsible" primary payers triggering exposure under the MSP Act. The court discussed at length why the claimant' was not entitled to waiver due to financial hardship. She did not file the Waiver of Overpayment Form SSA-632-BK (she didn't think she qualified) nor did she qualify under the "equity and good conscience" standard based on the totality of circumstances (amount of her settlement vs. lien amount). The court dismissed the distinction the claimant tried to rely upon citing Hadden v. United States, 661 F.3d 298 (6th Cir. 2011) among other sources for its position. Furthermore, the court did not agree with the argument that the lien should be reduced by the expenditures associated with the first surgery (for which Medicare would have been primary) because there was testimony from at least one expert that there could have been a lack of standard of care prior to the first surgery.

For an interesting discussion on Medicare Advantage Plans and the MSP ACT, see Humana Medical Plan and Humana Insurance Company v. GlaxoSmithKline, LLC. Case No. 11-2664 (3d Cir. June 28, 2012) In the case at bar, Glaxo provided Medicare patients with Avandia (diabetes medication) and entered into subsequent settlements which included the establishment of Medicare Set Asides. Humana, a Medicare advantage

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plan provided treatment and subsequently sought reimbursement (through a class action suit) from Glaxo as a “primary payer” under the MSP. The court allowed Humana to recover under 42 U.S.C. 1395y (b) (3) (A) extending the private cause of action to Medicare Advantage plans and providing a statutory right of recovery. Nice historical discussion of MAO’s in this case.

For a case involving MSP issues within the mediation process see **Bruton v. Carnival, 2012 US Dist LEXIS 64416**. In **Bruton** the Plaintiff sustained a slip and fall accident in December, 2011. A mediation agreement was executed which provided that the Plaintiff would agree among other things, to execute a release which would contain “Medicare provisions”. A dispute arose between the parties regarding the Medicare provisions contained within the release. The release indicated the Plaintiff would be responsible for any Medicare liens and a portion of the settlement funds would be held in trust by the undersigned attorney for a period of three years from date of receipt of funds or until CMS provides notice that all claims have been resolved whichever occurred earliest. Plaintiff struck the MSA portion of the language arguing the law does

not require one. A motion to compel settlement was filed with the court. The court agreed with the Plaintiff and found the mediation agreement did not require the creation of an MSA. The fact the release made Plaintiff responsible for satisfaction of Medicare liens and indemnified the defendants was deemed sufficient to satisfy the agreement made at mediation. Unfortunately, we know what weight CMS gives to indemnification provisions.

**HAPPY HOLIDAYS FELLOW MEMBERS!
SEE YOU NEXT YEAR!**

About the Author: Rochelle L. Lefler is an attorney whose practice is located in Tampa, Florida. Her background experience includes workers’ compensation, personal injury, and social security and MSP compliance. For over ten years, she has also been a Florida Supreme Court Certified Circuit Civil Mediator and currently concentrates her practice in the areas of Dispute Resolution and MSP consultation services.





The Results Are In!

by **Nicole Singleton, NAMSAP Executive Director**

The National Alliance of Medicare Set-Aside Professionals recently conducted a membership survey recently with nearly twenty-five percent of its membership responding.

This feedback is invaluable as NAMSAP continues to grow and evolve. As a volunteer leadership organization, we are committed to creating value for NAMSAP's membership by providing quality educational and networking opportunities. This input enables the organization to meet these objectives.

Brief highlights from the survey:

- 64% of the respondents have been NAMSAP members for three or more years;
- 82% of the respondents indicated their primary reason for joining NAMSAP was for educational and professional development opportunities;
- Over 70% of the respondents indicated they have attended at least one NAMSAP Annual Meeting & Educational Conference;
- Many cited NAMSAP's listserv as being a very important membership benefit; and
- 94% of the respondents indicated they have and/or would recommend NAMSAP to their colleagues.

The NAMSAP Board of Directors would like to thank those who participated in this survey. We are eager to incorporate feedback from the membership survey into new programming and additional services in the coming year.



NAMSAP Holds Inaugural Mid-Year Workshop in Chicago

by Douglas L. Shaw, CPA, COO - Medivest

NAMSAP hosted its first ever Mid-Year Workshop on September 20, 2012 at the Chicago Marriott Schumburg hotel and it was a rousing success. Over 65 people, representing virtually every stakeholder group in the Medicare Secondary Payer (MSP) compliance industry including allocators, insurance carriers, insurance defense attorneys, insurance plaintiff attorneys, life care planners, structured settlement brokers, MSP vendors, etc. attended. Attendee evaluations were extremely positive citing the diversity of the attendees, the interactive format of the meeting, the quality of the speakers, and presentations.

News and events in the MSP world have moved into high gear. News of some kind, whether it is a new court case, news of activity on a congressional bill, a CMS policy, U.S. Supreme Court activity, CMS request for comment, etc. seems to break every day or two. This makes a conference like this, put on by the MSP industry's trade organization and the leading educator in the industry, even more relevant for those who work in this industry.

The NAMSAP Conference Committee

The talent and dedication of the NAMSAP conference committee and others is what made this important conference such a success. So, my congratulations to the conference chairman Tom Matson (Medivest), the co-chairman and the other members of the committee; Gary Patureau (LASIE), Greg Gitter (Gitter & Associates), Tom Files (MyMatrixx), and Fran Provenzano (MSA Specialists). Others that assisted were Leslie Schumacher (PlanPoint MSA) as the board liaison, Education Committee co-chairs Tom Spratt (Protocols) and Christine Melancon (ez-MSA), and president Mike Westcott (Ringler Associates).

The Educational Program

National Legislative Update: Ben Basista (Burns White) and Mike Westcott (Ringler Associates) discussed the latest developments involving the Strengthening Medicare And Repaying Taxpayers (SMART) Act of 2011, which

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interestingly, passed the full U.S. House Energy and Commerce Committee by unanimous vote that very afternoon. The panel then discussed NAMSAP's response to the recent Centers' for Medicare and Medicaid Services (CMS) request for public comment on liability MSAs (known as CMS-6047-ANPRM). Finally, the case of *Hadden v. U.S.* was discussed.

Tips for Weaning Claimants off of Narcotics: Phil Walls RPh (MyMatrixx) and Dr. Mitchell Nudelman (Medical Director Solutions, LLC) presented a session on their strategies for successfully weaning claimants of heavy narcotics.

Trends for Allocators: Speakers Fran Provenzano (MSA Specialists), Eileen Atkinson (Genex), and Leslie Schumacher (Planpoint MSA) provided a fascinating, in-depth look at the latest trends for allocators to consider in terms of file preparation, medical treatments, pharmaceutical trends, etc.

Payer Perspective: Three experts, representing insurance carriers; Todd Reimer (Liberty Mutual), Sue Caito (Midwest Employers Casualty Corporation), and Neal Hayenga (QBE) talked about the MSP issues from their perspective. They discussed issues that can hold up a settlement, what they do with "below CMS threshold" cases, implantable devices, specific Rx pricing and treatment issues, CMS delays, lack of appeals process, Section 111, conditional payments, etc. This was insightful, relevant, and as good a presentation as I've ever heard anywhere.

Structured Settlement Broker Perspectives: Brad Cantwell (EPS), Don Engels (Selective Settlements), and John Muir (Ringle Associates) presented on how CMS guidelines and procedures effect settlements.

Ethics in the MSP Industry: This panel, lead by Earlene Doyle (Medical Management Concepts), James Early (Ringle Associates), and Perry Staub (Taggart Morton), talked about ethical issues facing the MSP professional. The NAMSAP Statement of Ethics and Professional Responsibility was analyzed. Then relevant federal and state laws were discussed followed by specific ethical situations that allocators and structured settlement brokers face.

Benchmark Rx Pricing & Industry Resources: Matt Larkin (Experea Healthcare) finished the day by discussing prescription drug pricing related to the Longshoreman and Defense Base Act, Workers Compensation rates, Usual and Customary rates, Average Wholesale Price, etc. Matt concluding his presentation by demonstrating a new software program that he is working on that will provide valuable Rx rate schedule information to the MSP Industry.

The NAMSAP Board Meeting

In addition to the Mid-Year Workshop, NAMSAP held a board meeting in Chicago where they conducted a long-term and short-term strategic planning session. The current board members of NAMSAP are: Michael Westcott (Ringle Associates) President, Douglas Shaw (Medivest) Vice President, Deborah Pfeifle (Gould & Lamb) Secretary, David Korch (EPS Settlements Group) Treasurer, Aaron Fredrickson (MSP Compliance Solutions), Barbara Bate (Northeast Life Care Planning), Benjamin Basista (Burns White), Fran Jacoby Provenzano (Medicare Set-Aside Specialists), Leslie Schumacher (PlanPoint MSA), Mark Popolizio (Crow Paradis), Matt Larkin (Experea Healthcare), and Nicole Singleton (Third Eye Group) Executive Director non-voting.



DATA COLLECTION December 2012

The DDC remains in its infancy stage, with a few core members providing the majority of the data to be reviewed. We continue to reach out to the larger vendors, as the larger the data pool, the more reliable our outcomes will be.

In review of the September 2012 data submitted the following issues were identified:

New Vendor Turn Around Time(TAT)	41 days
Previous Vendor TAT	205 days

Totals:

Approval-27% • CH-41% • CL-32%
Sixty-four (64) medications were submitted for data review.

Findings included:

Regional Offices—consistent in pricing, however there were several instances of medications priced by CMS, with outdated pricing codes.

Submitters—several instances of submitted deactivated codes—resulting in many instances of CH & CL.

In October, we reached out to the listserv community, to assist in identifying issues they are experiencing with the review process.

Of concern to our membership is the significant increase in the number of CMS **counter-lowers**, along with inconsistent pricing of joint replacements. Historically, the industry standard was a replacement every 12-15 years, however we are now experiencing a more frequent or longer timeframe for replacement. Again, historically, the costing of SCS or fusions was consistent. It is no longer projected in that same manner. This also applies to simple issues such as physician visits. This being said, other responses from CMS, revert to the pricing prior to 7/2/2012.

What we have seen is a response time from CMS/WCRC, that we have never experienced. Previous to 7/2/2012, the average turnaround time was 204 days. It is now 39-41 days.

As this is being written in the early part of December, we are anticipating an influx of CMS approval responses prior to the New Year. We will review these responses and hopefully be able to establish stronger patterns from CMS/WCRC.

We meet the third Wednesday of the month for one hour. Please consider joining us and sharing your information. This is one way in which our industry will remain strong and vital.

Should you have any questions, please do not hesitate contacting me at fran@msaspecialists.com.

Fran Provenzano
RN BSN CDMS CCM CLCP MSCC CMSP

MARK YOUR CALENDAR!



SAVE THE DATE

2013 NAMSAP ANNUAL MEETING
AND EDUCATIONAL CONFERENCE

April 25 - 26, 2013

Baltimore, Maryland • Hyatt Regency Baltimore

Check out the NAMSAP website for more information on this and other upcoming events.

CALL FOR NEWSLETTER ARTICLES

The NAMSAP Communications Committee would like to encourage you to submit an industry-related article for our upcoming newsletter. We are accepting submissions in the following categories: Legal, Legislative, and Medical. If you are interested in contributing to one of these categories, or have an idea for a new category, please contact April Pettengill, Communications Committee Chair. She can be reached by email at april@alpmedicalconsultants.com, or call her at (802) 849-2956.

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