



Volume 3, No. 4 December, 2011

Quarterly Newsletter

**In This Issue:**

The annual conference in NOLA was a huge success! For those of you who did not attend—you should make plans to attend the upcoming conference in Orlando on March 27-28.

Some big news came out from Centers for Medicare and Medicaid including the resignation of Donald Berwick and the appointment of Marilyn Travenner. (See the related article below).

The featured article this quarter is from Aaron Frederickson. He address the Hold Harmless or indemnification clauses and the ethical dilemma they pose to the MSP Legal Practitioner.

Also a reminder that there are two board positions available for the 2012-2014 term. See announcements on page 11.

April Pettengill, RN, CRRN, CNLCP, MSCC  
 Chairperson Communication Committee

**Berwick Resigns and Travenner is nominated**

Medicare chief Don Berwick, the point man for carrying out President Obama's health care law, announced that he will stepped down on Dec. 2. It was anticipated that Berwick would not gain Senate support for another term. Berwick was appointed by President Obama in July 2010.

In Berwick's place, Marilyn Travenner was nominated for Medicare Chief. Travenner has been involved in health care administration for many years: as chief of Nursing and CEO of one of Virginia's largest hospitals to serving as Virginia's Medicare Chief since 2004.

Tavenner joined the Obama administration in April 2010 as Berwick's deputy principal administrator. In health policy circles, her nomination to head Medicare was widely expected by the end of the year. She's been a relatively quiet presence in the agency, so far never testifying before Congress.

The American Nurses Association issued this statement: "Marilyn Tavenner will make an excellent CMS administrator," remarked ANA President Karen Daley, PhD, MPH, RN, FAAN. "As a nurse, her focus is on improving care for the patient. ANA looks forward to working with Tavenner to implement the provisions of the Affordable Care Act so that Americans can benefit from a system that is more responsive to their need for accessible and high quality care."

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**SAVE THE DATE!**

**ISLANDS OF ADVENTURE**

**NAMSAP 2012**  
ORLANDO, FLORIDA

NAMSAP's Eighth Annual Meeting and Educational Conference will be held on **March 28th - 30th, 2012** at the Loew's Royal Pacific Resort, adjoining Universal Studios, CityWalk and Islands of Adventure in Orlando, Florida.

**Plan now to attend!**

Full Registration beginning December 1 **Members - \$325 per person** \*Non-Members - \$425 per person

Register now for your hotel room at Lowes Hotel in Orlando

<http://www.loewshotels.com/Royal-Pacific-Resort/>

# SMART Act Update: The SMART Act Introduced in the U.S. Senate

by Mark Popolizio, Esq. Crowe Paradis

On October 17, 2011, the *Strengthening Medicare and Repaying Taxpayers (SMART) Act* was introduced into the United States Senate as Senate Bill 1718 (S. 1718). The bill was introduced on a bipartisan basis by Senator Ron Wyden (D-OR) and Robert Portman (R-OH). Since being recently introduced in the Senate, the SMART Act (S.1718) has already secured 13 bipartisan co-sponsors and has been referred to the Senate Finance Committee.

The SMART was previously introduced in the U.S. House in March 2011 by Rep. Ron Kind (D-WI) and Rep. Tim Murphy (R-PA) as House Bill 1063 (H.R. 1063). In the House, the SMART Act (H.R. 1063) currently has 72 bipartisan co-sponsors. The bill has also been referred to several House committees including: Ways and Means; Ways and Means, Subcommittee; Energy and Commerce; and Energy and Commerce, Subcommittee.

The SMART Act proposes major reforms to several key areas of Medicare Secondary Payer (MSP) compliance relating to Section 111 MMSEA reporting, conditional payments and other important aspect of the MSP. In brief summary, the proposals contained in the SMART Act would reform the MSP as follows:

- Allow parties to obtain Medicare's "final" conditional payment amount *prior* to a settlement, judgment, award, or other payment;
- Extend MSP appeal rights to primary payers and other parties;
- Modify Section 111's "\$1,000 a day, per claim" penalty provision;
- Establish Section 111 "safe harbors" protecting RREs from liability;
- Eliminate the required use of social security and health identification numbers;
- Establish a three year MSP statute of limitations; and
- Set an annual MSP compliance threshold exemption amount.

More information about the SMART Act and the bill's legislative progress can be obtained at [www.marccoalition.com](http://www.marccoalition.com) and [www.govtrack.us](http://www.govtrack.us).

This update was prepared by: Mark Popolizio, Esquire, Crowe Paradis Services Corporation, [mpopolizio@cpscmsa.com](mailto:mpopolizio@cpscmsa.com); (786) 459-9117.



## Recent MSPRC Announcements

By Rochelle L. Lefler, J.D.

The MSPRC have announced several new features and services available. The following is a brief summary of these developments; please visit their website at [www.msprc.info](http://www.msprc.info) for the full text and eligibility criteria:

### 1. FIXED PERCENTAGE OPTION- Liability , Self Insurance

Effective 11/7/11

Applies to certain beneficiaries with physical trauma

Pertains to settlements of \$5,000 or less

Resolution of claim for 25% of total settlement

If elected by beneficiary, no right to seek appeal /recovery

Form language provided

### 2. \$300 THRESHHOLD –Liability, Self Insurance

Effective 09/06/11

Applies to settlements of \$300 or less, if eligible

### 3. SELF SERVICE FEATURE TO CUSTOMER SERVICE LINE

Effective 09/30/11

Can obtain current demand and conditional payment amounts

Can obtain dates letters were issued.

Please note the following from CMS:

### 4. WEB PORTAL (CMS)-WCMSA

Went live 11/29/11

Can report or track cases submitted

[www.cob.cms.hhs.gov/WCMSA/login](http://www.cob.cms.hhs.gov/WCMSA/login)

5. On 10/11/11/CMS issued a supplemental policy memo (Liability, Self Insurance) regarding exposure/ingestion claims which revises the 9/30/11 memo previously issued. A copy of this memo can be found at [www.msprc.info](http://www.msprc.info).

# TO HOLD HARMLESS AND/OR INDEMNIFY: ETHICAL CONSIDERATIONS FOR THE MSP LEGAL PRACTITIONER <sup>1</sup>

## BY AARON FREDERICSON

Since its inception, the Medicare Secondary Payer Act (MSP) has created a number of headaches for legal practitioners. One of the emerging issues in this body of law is the compliance with ethical opinions regarding the conduct of attorneys and settling legal disputes. This article will discuss some of these growing ethical issues and offer suggestions for legal practitioners when dealing with these issues.

### ETHICAL OBLIGATIONS OF COUNSEL AND HOLD HARMLESS/INDEMNIFICATION

As any attorney has known since law school, being a part of this profession brings with it ethical obligations governed by the individual state supreme courts and their offices of professional responsibility. As a result of these professional obligations, attorneys need to be mindful of these responsibilities in every aspect of their practice, including the settlement of claims. As is the case with our Federal system, these obligations are dependent upon the standards set forth in each individual state. As a result, attorneys should be aware that the standards governing their conduct in one state/jurisdiction may not be recognized in another.

#### Hold Harmless/Indemnification in General

Prior to the MSP Act becoming a major issue in workers' compensation and other cases involving personal injuries, attorneys were often not mindful of the obligations of the Act, and its potential ethical ramifications. Prior to the year 2000, a number of jurisdictions issued advisory opinions regarding the conduct of lawyers with respect to the settlement of liability and/or workers' compensation claims, and the resolution of unpaid liens or medical providers as a condition of settlement. However, these advisory opinions were short and vague. For example, in 1996, the state of North Carolina issued a rather benign statement indicating that lawyers in a personal injury claim may not execute an agreement to indemnify the tortfeasor's liability insurance carrier against unpaid liens for medical providers. <sup>2</sup>

Another example comes from the state of Wisconsin. <sup>3</sup> In this opinion, the Wisconsin Board of Professional Responsibility was asked to determine whether the Code of Professional Responsibility and the Rules for Professional Conduct for Attorneys precluded attorneys from proposing, demanding and/or entering into settlement agreements that included indemnification or hold harmless provisions binding an attorney to personally satisfy an unknown lien against the settlement funds or property.

In their findings, the Board opined that the primary ethical problem for conditioning a settlement agreement that required a lawyer to become a guarantor against the lien is that it placed the lawyer's interest at odds with their client's. In support of their opinion, the Board cited a number of sources, including *Evans v. Jeff D.*, 106 S. Ct. 1531 (1986), which suggested that settlement proposals sometimes result in legal or ethical wedges between an attorney and the client. Based upon these factors, the Committee opined that it was unprofessional conduct to enter into such hold harmless/indemnification agreements. The Board also questioned whether such agreements gave the attorney a financial interest in litigation. <sup>4</sup>

In addition to these ethical issues, other state boards of professional responsibility questioned other aspects of such agreements. These issues have included whether such agreements exceed the scope of representation of an attorney, conflicts of interest in general, prohibited transactions, the safekeeping of property, declining/terminating representation, the role of an attorney as an advisor and misconduct in general. <sup>5</sup>

#### Impact of the MSP Act on Attorney Ethical Considerations

In 2005, the state of Indiana was one of the first states to specifically address the issue of hold harmless/indemnification agreements by attorneys under the auspices of the MSP Act. In the first advisory opinion issued that year, the Indiana State Legal Ethics Committee of the Indiana State Bar Association opined in an advisory opinion that such agreements are unethical. <sup>6</sup> In evaluating this issue, it was noted that hold harmless clauses involving attorneys violated the Indiana Rules of Professional Conduct in several regards:

- Rule 1.2(a): Obligates an attorney to abide by a client's decision whether to settle a matter and that this obligation may be compromised where an offer interjects the attorney's own financial exposure into the settlement negotiations.
- Rule 1.7(a)(2): Prohibits an attorney from representing a client and issues involving significant risk of representation that may "materially limit" the attorney's interest. In this regard, it was noted that acceptance of an otherwise favorable settlement may rest on an attorney assuming an uncertain personal exposure, which results in a conflict between the attorney and the client.
- Rule 1.8(e): Prohibits an attorney from providing financial assistance to a client that exceeds advancements of costs and expenses associated with litigation, and a promise of indemnification may make the attorney essentially a guarantor of the client's legal obligations.
- Rule 1.15(d): Obligates the attorney to promptly return funds or property of a third person who are entitled to receive upon settlement.
- Rule 1.16: Prohibits an attorney from representing a client if the representation violates the Professional Rules of Conduct.
- Rule 2.1(a): Requires an attorney to exercise independent professional judgment when representing their clients. In instances where an attorney agrees to indemnify another places an inexcusable burden on the element of independent judgment of that attorney. <sup>7</sup>

—continued

In examining this issue, the Indiana Ethics Committee noted that under the MSP Act, conditional payments, or presumably Medicare's future interests, are not necessarily a lien in the true sense of the word. Instead, the Committee noted that Medicare only possesses a right to bring a cause of action against any entity responsible for primary payments for medical expenses.<sup>8</sup>

Interestingly, the Indiana Ethics Committee specifically did not address hold harmless or indemnification issues in the context of the Medicare and Medicaid claims/liens. Instead, the Committee only determined the narrow issue regarding settlement agreements that require a counsel to hold another harmless, violate the rules.<sup>9</sup>

Following the issuance of this decision, several years elapsed before another state specifically examined hold harmless/indemnification in settlements involving Medicare beneficiaries, or Medicare's interests. In 2010, the state of Tennessee addressed these issues.<sup>10</sup> In this opinion, the specific inquiry was regarding the propriety of requesting plaintiff's counsel to enter in agreements or releases which require the attorney to ensure the payment of medical bills or lien, or more specifically, to indemnify/hold harmless another party. In examining this rule, the Committee reviewed prior ethical decisions, as well as several existing professional responsibility rules regarding the nature of a client's funds held in trust, an attorney's interests in litigation and also the duty or role of a lawyer to protect their clients' interests. The Committee also reviewed various ethical decisions from several other states before reaching its decision.

In conclusion, the Tennessee Board found that its ethical rules were consistent with those in Arizona and noted that "requiring a plaintiff's attorney to enter into agreements posed in an inquiry, particularly requiring that attorney indemnify and/or hold harmless any party being released or subrogation interest holder from medical expenses or liens, creates a conflict between the interests of the plaintiff's attorney and those of the client."<sup>11</sup> The Board also noted that attorneys cannot ethically agree to such agreements and/or clauses in their settlements.<sup>12</sup>

With respect to the MSP Act, the Tennessee Board made no specific findings. However, the Board did specifically note that "nothing in this opinion is intended to relieve any individual or any entity, including plaintiff's counsel, of any obligations, including reporting and/or payment obligations, and posed by the MSP Act, 42 U.S.C. §1395y *et seq.* Counsel (defense or plaintiff) may be subject to a direct action suit by the Center for Medicare and Medicaid Services (CMS) recovering attorney's fees collected through a settlement or release that has not been properly reported and negotiated consistent with the obligations of this statute."<sup>13</sup> In addition to specifically citing the MSP Act, the Board also noted the following regulations which speak to the subject of Medicare's rights of recovery.

- 42 C.F.R. §411.24(g): Recovery From Parties That Receive The Primary Payments. CMS has a right of action to recover its payments from any entity, including a beneficiary, provider, supplier, physician, attorney, state agency or private insurer that has received a primary payment.
- 42 C.F.R. §411.26(a): Subrogation. With respect to services for which Medicare paid, CMS is subrogated to any individual, provider, supplier, physician, private insurer, state agency, attorney, or any other entity entitled to payment of a primary payer.

Further, the Committee also emphasized Medicare's other subrogation rights pursuant to 42 U.S.C. §1395y(b)(2)(B)(iv).<sup>14</sup>

Following the issuance of the decision in Tennessee, the Supreme Court of Ohio, Board of Commissioners on Grievances and Discipline, issued an opinion regarding this topic in early 2011.<sup>15</sup> In this Opinion, the question revolved around the ethical obligations of an attorney to propose, demand or agree to personally satisfy any and all claims by third persons as to settlement funds. Unlike many of the prior ethical opinions regarding this subject, the state of Ohio specifically addressed Medicare and Medicaid "liens." In examining this issue, the Board noted various rules of conduct by attorneys outlined above. They also examined advisory opinions from a number of different states including Arizona, Illinois, Kansas, Missouri, North Carolina, South Carolina, Tennessee and Wisconsin. Based on its findings, the Board determined that personal indemnification by a lawyer is essentially "an agreement by the lawyer to provide financial assistance to the client."<sup>16</sup> As a result, such agreements were determined to prospectively be considered unethical.<sup>17</sup>

In April 2011, the Florida State Bar was the most recent bar to issue an advisory opinion regarding indemnification issues.<sup>18</sup> Prior to the issuance of this opinion, the Florida State Bar was petitioned by two of its members and provide with the following operative facts:

- Whether an attorney representing a plaintiff in a personal injury matter can sign a settlement release containing a hold harmless/indemnification agreement in favor of the opposing party related to any future liability under the MSP Act.
- That under the MSP Act, the plaintiff and their attorney are required to use settlement proceeds from a third party recovery to satisfy Medicare's subrogation rights (conditional payments), and are required<sup>19</sup> to create from the proceeds of the settlement a Medicare Set Aside to protect Medicare's interest from payment of future benefits related to the personal injuries.
- That in workers' compensation claims, the MSP Act required<sup>20</sup> the creation of a Medicare Set Aside, but nothing in the MSP Act's regulations or case law interpreting the Act expressly requires a Medicare Set Aside in the context of a third party liability claim.
- That Medicare has failed to provide any formal written guidelines as to the need for a Medicare Set Aside in the context of a liability claim.<sup>21</sup>

The Florida Bar closely examined its existing Rules of Professional Responsibility, as well as the Board of Commissioners on Grievances and Discipline of Ohio did earlier in 2011, as well as opinions from Tennessee and Indiana.

In response, the Florida Bar staff opined that a defendant lawyer should not request that a plaintiff lawyer enter into such an indemnification agreement as it would violate its rules, nor should they knowingly assist or induce others to do so. 22

**ETHICAL CONSIDERATIONS AND THE IMPACT OF THE MSP ON PROFESSIONAL CONDUCT**

In all reviewed opinions regarding the ethical obligations of attorneys when seeking to indemnify/hold harmless in settlement agreements, a number of themes run common through all opinions.

**The Professional Role of an Attorney**

In reviewing these rules, the state ethical boards take seriously the role of an attorney as an officer of the court, and limits that such settlement agreements place on the role of an attorney. Attorneys wear a number of different hats throughout the course of their daily practice. These hats include the roles of an advisor, counselor, and most importantly, legal practitioner.

**Inherent Conflicts Arising From Hold Harmless/Indemnification Agreements**

At this time, a majority of the state ethical opinions do not specifically discuss the role or impact of the MSP Act on the ability of one attorney to indemnify or hold harmless another. However, an underlying theme in all ethical decisions discussing this point is that once an attorney has a financial interest in a lawsuit, that interest ultimately affects the attorney's ability to be a zealous advocate for their client and obtain the best settlement possible for that client.

However, in reaching these conclusions, various states have examined the impact of hold harmless/indemnification agreements from different angles. For example, the state of Indiana correctly recognized that under the MSP Act, Medicare's right of recovery is not by way of a lien, but instead under either a direct cause of action or through subrogation.

Similarly, the Board of Professional Responsibility in Tennessee went to great lengths to explain the nature of the MSP Act and the rights of recovery Medicare has. In its cautionary footnote, the Board also explained that a number of different parties are subject to adverse action taken by the Federal Government. While not explicitly making statements to this effect, the Board in a sense cautions legal practitioners who hold harmless/indemnification clauses, regardless of who may be involved are unethical, or at the very least unenforceable.

On the other hand, the state of Florida has taken a very broad approach to its interpretation to the MSP Act and the ethical underpinnings of hold harmless/indemnification clauses in settlement agreements. While the state bar appears to misinterpret the "requirements" of the MSP Act, a decision was issued that overall, is consistent with other jurisdictions that have weighed in on the subject. Further, the opinion suggests to some extent that hold harmless/indemnification clauses involving parties beyond counsel in the MSP Act context are unethical, or at least unenforceable.

**Ethical Limitations of Hold Harmless/Indemnification Financial Assistance to Clients**

As a whole, most states in issuing ethics opinions have discussed this aspect of indemnification/hold harmless to some extent. At this time, it is mainly limited to a request of a defense counsel to have that indemnification or hold harmless agreement provided by a plaintiff's attorney. However, it does appear logical that the same arguments could be made with respect to past and future interests under the MSP Act and the explicit direction given in the state of Tennessee to individuals and entities responsibilities under the MSP Act including, but not limited to, reporting requirements, being subjected to a direct cause of action by Medicare and the federal government's right of subrogation.

**CONCLUSIONS**

At this time, there are a number of ethical issues involving indemnification and/or hold harmless agreements as it relates to plaintiffs counsel that are made at the request of defense counsel. As a whole, states to-date have unanimously concurred that such agreements are unethical. With respect to issues concerning the MSP Act, the several states that have weighed in on this issue are again in complete agreement that due to various constraints, such agreements are also unethical when it comes to liens or subrogation interests under the MSP Act.

However, the real issue remains whether or not any constraints to hold harmless and/or indemnification agreements can be made related to parties of the action. To date, state advisory opinions have not specifically addressed this issue. However, there is some sense that they very well could be considered unethical, or in the long term unenforceable based upon the rights of the federal government under the MSP Act and the nature of their "lien."

Based upon the above factors, the following recommendations can be made in order to help attorneys safely navigate the area of MSP Act compliance, as well as practice within the bounds of state ethics opinions:

- Investigate all Medicare Secondary Payer issues early in the process. For plaintiff or petitioner attorneys, this can involve questioning your client regarding his or her Medicare status upon initial client intake. For defense counsel, measures such as requesting that the claimant execute a Section 111 Reporting Verification form as part of discovery, or at the very least, question the plaintiff/petitioner about his or her status under oath at a deposition.
- Place Medicare on notice early on in the process through the Coordination of Benefits Contractor (COBC).
- Follow up and maintain regular contact with the Medicare Secondary Payer Recovery Contractor (MSPRC) regarding conditional payment information throughout the process. Given the time frame in which updated conditional payment letters can be generated, it is important to anticipate scheduling deadlines and make requests in a timely manner.
- Consider and protect Medicare's past and future interests in all settlements. While Medicare Set Asides are not necessarily "required," it is important to take note of the various regulations interpreting at least workers' compensation settlements and noting that attempts to shift the burden onto Medicare may ensure your settlement agreement null and void. While federal regulations do not necessarily address non-workers' compensation claims, it is important for practitioners practicing in these areas to take heed of existing regulations.

- Consult the ethical advisory opinions and rules of professional conduct in the jurisdiction you are practicing in regarding hold harmless/indemnification agreements. While most jurisdictions have taken the position that attorneys are limited in indemnifying or holding another attorney harmless for unknown medical liens, questions still remain as to whether this can be done regarding Medicare's interests. Always be cautious when dealing with interests involving the MSP Act.

**About the Author**

Aaron Frederickson has been practicing law since 2002 when he was admitted to practice law in Minnesota. Aaron is also licensed to practice in Wisconsin and in U.S. District Court—District of Minnesota. Aaron's law practice has included workers' compensation (Minnesota and Wisconsin), subrogation, no-fault and general liability issues.

Early on in Aaron's law practice, he recognized the impact of the Medicare Secondary Payer Act on litigation. In 2005, he started consulting with a diverse group of clients on MSP Act related issues and received his Medicare Set-Aside Consultant Certified (MSCC) certification in 2006. Aaron's practice has since expanded to include consultation services related to Medicare's Section 111 reporting requirements.

When Aaron is not busy practicing law, he is active in his community and with his family. He is a licensed soccer coach with the United States Soccer Federation (USSF) and the National Soccer Coaches Association of America (NSCAA). Aaron also enjoys reading, hunting and recreational sports.

Aaron is the founder of MSP Compliance Solutions and enjoys solving complex problems for his clients. Aaron can be contacted at (651) 485-7036 or via e-mail at [apfrederickson@yahoo.com](mailto:apfrederickson@yahoo.com).

**Footnotes**

- 1 The author would like to thank Donald G. Fernstrom, *Esq.* for his assistance and comment on this paper.
- 2 North Carolina State Bar Ethics Op., RPC 228 (1996).
- 3 Wisconsin Formal Op., E-87-11 (1987).
- 4 *Id.*
- 5 State Bar of Arizona Op. 03-05 (2003). Numerous other decisions have also questioned similar ethical roles of an attorney.
- 6 Indiana Opinion No. 1 (2005).
- 7 *Id.*
- 8 *Id.*
- 9 *8Id.*
- 10 Tennessee Formal Op. 2010-F-154 (2010).
- 11 *Id.*, *See also* State Bar of Arizona Op. 03-05 (2003).
- 12 Tennessee Formal Op. 2010-F-154 (2010).
- 13 *Id.*
- 14 *Id.*
- 15 Ohio Board of Commissioners on Grievances and Discipline, Opinion 2011-2 (2011).
- 16 *Id.*
- 17 *Id.*
- 18 Florida Ethics Op. 30310 (2011).
- 19 The author questions the accuracy of the statement that CMS or the MSP Act "requires" a Medicare Set-Aside in any workers' compensation, no-fault or general liability case.
- 20 *See* Footnote #19.
- 21 Florida Ethics Op. 30310 (2011).
- 22 *Id.*

**NAMSAP Welcomes Brian Fillion, President of Ringler Associates New Jersey,  
as Membership Committee Chairman**

For more than 25 years Brian has been providing structured settlement services to major insurance companies and law firms for resolution of personal injury, workers' compensation and environmental claims. In 1995, he became President of Ringler Associates New Jersey and an Associate of [Ringler Associates](http://www.ringlerassociates.com), the world's oldest and largest settlement annuity company. ([www.ringlerassociates.com](http://www.ringlerassociates.com))

"NAMSAP'S work is more important than ever, given the rate of change of federal legislation that impacts our customers and clients," says Brian. "I look forward to working with the membership committee to help grow the organization and continue its valuable work."

In 2009, Brian launched [Liability Transfer Corporation](http://www.liabilitytransfer.com), which employs an innovative approach to help major corporations, insurance companies and governmental departments and agencies clean their balance sheets by retiring specific liabilities and ongoing claims. ([www.liabilitytransfer.com](http://www.liabilitytransfer.com))

Brian is a Certified Medicare Secondary Payor Act Professional, a member of NAMSAP and the National Structured Settlements Trade Association. He received his EMBA with a concentration in finance from St. Joseph's University, and a Bachelor of Science degree in business management from Rhode Island College. In addition, he attended the Advanced Management School at Harvard University where he studied negotiation techniques. He also taught executive speech and negotiation skills at the Aetna Institute. Brian is a Registered Representative with the National Association of Securities Dealers (NASD) with a Series 7 license and has all pertinent insurance licenses.



## **The Communications Committee:**

The Communication Committee's primary duty is the publication of the NAMSAP News Newsletter once per quarter. We have had a few members drop off the committee and we are looking for some replacements. The Communication Committee will also be working with the Webmaster to help to make the website more user friendly. Any suggestions you have please send them to April Pettengill, Committee Chair at April@alpmedicalconsultants.com

**Membership Committee:** See the announcement above regarding appointing Brian Fillion as Membership Committee Chairperson.

Total Members: 571 Professional Members: 262 Associate Members: 3 Partner Professional Members: 23 Partner Reps: 283 2011 New Members: 119

## **Education committee:**

The Education Committee has been actively working on the creation of our new Data & Development Committee. The idea came out at our last Annual Meeting when members started approaching the Education Committee with concerns about certain issues related to our industry. The mindshare and energy was so great that thus a new Committee was born. We had our first meeting on November 22nd and are in the process of forming a way for our members to log their issues and also receive feedback to help improve their services and value.

Tom Matson is the new chairperson for the Annual Meeting Site Committee and has been doing an excellent job planning out the next annual meeting agenda along with the rest of his committee members. Orlando is going to be a total success and everyone should be very excited about going. Especially those living in colder climates this year.

We have launched our access to purchasing training modules online which were previously being sold as DVD/hard copy only. The Education Committee has worked with the International Commission on Health Care Certification (ICHCC) to allow the training modules to also be used for re-certification/refresher courses and you can still receive the education credit even if you have taken the module in the past. The online access will also be very helpful if any existing modules needs to be updated to match current events, legislature or CMS requirements.

## **Data and Development Committee:**

The initial meeting of the Data and Development Committee was held on November 22, 2011. Initial goals were identified, concept of the function of the committee was clarified and work has begun on extracting common issues that develop amongst MSA vendors. Our next meeting is scheduled for December 6, 2011.

**Webinar Sub-committee:** The Webinar Committee has launched NAMSAP University on the Website. You can now purchase and listen to previously recorded NAMSAP Webinars. Currently available are:

## **2010**

**MARCH 2010 WEBINAR:** CMS Counters & the MSP Code

**APRIL 2010 WEBINAR:** A Carrier's Perspective

**MAY 2010 WEBINAR:** Understanding Conditional Payment's and how to resolve conditional payment's

**JUNE 2010 WEBINAR:** Rx Cost Management for MSA Purposes

**JULY 2010 WEBINAR :** CMS WCMSA Performance Statistic CY 2005 through 2009

**SEPTEMBER 2010 WEBINAR:** The Challenges of Self-Administration & How to Create Successful Outcomes

## **2011**

**JANUARY 2011 - WEBINAR :** Special Needs Trusts and Reducing Medicaid Lien

**MAY 2011 - WEBINAR :** Recent Case Law

Visit the NAMSAP Webpage for more information on how to access. You can earn CEU's toward re-certification from these webinars.

**Legislative and Law Committee:** See the SMART Act Update on page 4.

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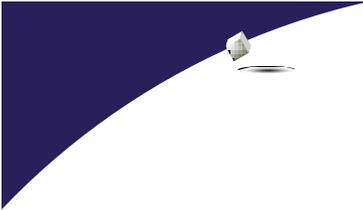
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# National Alliance of Medicare Set-Aside Professionals

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**The mission of NAMSAP is to foster the highest standards of integrity and competence among Medicare Set-Aside Professionals and those they serve.**



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!

## Announcements

### Call for Articles:

The Communications Committee would like to extend an offering to all interested authors. We are currently receiving articles for the 1st quarter news letter being published in March. We currently have three categories for articles: 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, Chairperson for the Communications Committee. You can contact April by email at [april@alpmedicalconsultants.com](mailto:april@alpmedicalconsultants.com), or call her at (802) 849-2956.

### Board Positions are available.

**There are two NAMSAP Board Positions available for the 2012–2014 term. These are two year terms. Please submit your nominations to President Mike Westcott at [MWestcott@ringlerassociates.com](mailto:MWestcott@ringlerassociates.com). The nomination committee will review the nominees and the positions will be voted on at the Annual Conference in March in Orlando.**

