National Alliance of Medicare Set-Aside Professionals

Quarterly Newsletter September 2010

President's Letter to NAMSAP

Dear NAMSAP Members,

WOW! What a year it has been in the Medicare Secondary Payer world and it looks like the impacts to our industry are only just starting. This year's annual meeting will be the place for MSA professionals to have a chance for peer conversations on our changing world. There is no better opportunity for one-on-one exchanges than your NAMSAP Annual Education Seminar. We really encourage you to take this opportunity to meet with your peers.

Some of the topics we will all be discussing with each other include, but are not limited to:

- LMSAs and which Regional CMS offices are doing reviews;
- Ongoing updates and changes to Section 111 reporting;
- COBC Lien resolution impact on our industry;
- Opportunities and pitfalls in our industry;
- Recent personnel changes at the major companies;
- What next from CMS?; and,
- Since we are in Washington, what impact will the election have on our industry?

The tentative agenda for this year's program is out and it looks like another great program from our Education Committee. Your Education Committee will be announcing updates to the agenda throughout the month leading up to the meeting. Speakers are committed and we look forward to the opportunity for you to hear from some new voices this year. If you haven't already done so, get your registration completed. Where else can you go to find a focus on your industry and meet so many of your peers?

Looking forward to seeing all of you at the Hyatt !

Sincerely,

Michael E. Westcott
President, NAMSAP

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President, NAMSAP

Special Points of Interest:

- 2010 Meeting: September 30th through October 1st, Washington, DC.

Inside this issue:

NAMSAP 6th Annual Meeting and Educational Conference

Thursday, September 30, 2010, through Friday, October 1, 2010

The National Alliance of Medicare Set-Aside Professionals (NAMSAP) 2010 Annual Meeting and Educational Conference is scheduled for September 30, 2010, through October 1, 2010, at the Hyatt Regency Crystal City in Arlington, VA.

Exhibitor and Sponsorship Opportunities:

Sponsors and exhibitors have an exclusive opportunity to showcase their products and services to the members of this unique organization. Sponsorships will be accepted on a first-come, first-serve basis. Sponsorship recognition will include a listing in the program, signage at the conference and acknowledgement at the podium.

Sponsorship opportunities form: click here

General Meeting Information:

Time:

September 30th, 11:30am to 6:00pm

October 1st, 7:00am to 12:00pm

Registration Rate:

$200 for members

$325 for non-members

Room Rate:

$199.00 (mention NAMSAP during registration)

This rate will be honored by the hotel through October 3, 2010.

Online Registration Information: click here

CEU credits are available.

Tentative Agenda

11:30am	Opening Remarks
	Keynote Speaker
	Break with Exhibitors
	Professional Administration Panel
	Legal Update Panel
	Break with Exhibitors
6:00pm	Cocktail Party and Buffet Dinner

Thursday, September 30, 2010:

7:00am	Continental Breakfast
8:00am	Structured Settlement Panel
	Break with Exhibitors
	Pharmacy Panel
	MSA Case Study
	MARC Update
12:00pm	Closing Remarks

Friday, October 1, 2010:

About NAMSAP:

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. Its members are comprised of attorneys, nurses, settlement planners, claims professionals and others professionals who tackle the issues of Medicare compliance in an informed and professional manner.

NAMSAP was formed to help individuals and organizations address claims impacted by the Medicare Secondary Payer Statute (MSP). The MSP is federal legislation designed to prevent the shifting of responsibility from a primary payer to the federal government in liability and workers' compensation claims.

Purposes of NAMSAP:

- Develop standards and define best practices for the industry;
- Promote a multidisciplinary approach to the Medicare Set-Aside practice;
- Provide a forum for learning and shared knowledge between all associated disciplines;
- Provide a unified voice to affect change and improve the Medicare Set-Aside process; and
- Protect the interests of all parties in settlements involving Medicare Set-Aside related issues.

Book your reservations now at the Hyatt Regency Crystal City for the 6th Annual NAMSAP Meeting and Educational Conference.

"The mission of NAMSAP is to foster the highest standards of integrity and competence among Medicare Set-Aside Professionals and

MARC Updates

Over the past year MARC has been extremely active in Washington D.C. advocating for changes, major and minor, to the implementation and operation of the Medicare Secondary Payer laws. In existence since late 2008, the association has accomplished a tremendous amount given the fact that it did not exist even two years ago. More specifically, MARC has achieved the following legislative and regulatory results over the past year:

"MARC has had a pronounced effect on the implementation of the Medicare Secondary Payer Reporting Process."

I. Section 111 Implementation

MARC has had a pronounced effect on the implementation of the Medicare Secondary Payer Reporting process, including significant input into the reporting process, its implementation and roll-out, and its operation. MARC's accomplishments include:

a. **June 2009 – March 2010**
Helping Shape the Design and Information Flow of Reporting
MARC was one of the first organizations to communicate and work collaboratively with CMS regarding the issues raised by the Section 111 reporting process, and the need for the Agency to ensure that its reporting system was functional.

b. **December 2009 – February 2010**
Leading the Effort to Defer Implementation through January 2011
MARC was the first organization to identify the structural problems with the Section 111 implementation process in the first quarter of 2010, and was the first organization to call for a delay in the reporting process from the then-proposed April 1, 2010 date. (This was after MARC had succeeded in obtaining a delay from the original July 1, 2009 implementation due to the lack of guidance and systems available to start the process.) Shortly after MARC wrote the Agency and began working with the Congress, CMS agreed to defer Section 111 reporting through January 1, 2011.

c. **February 2010 – May 2010**
Informing Congress and the White House about the Section 111 Processes
MARC has been the leading voice in communicating with the Congress and Executive Branch, up to and including the White House, on Section 111 issues, and concerns about the implementation process. MARC has educated the leading policymakers and their staff, both within the Congress and at the Office of Management and Budget (OMB) regarding the Section 111 process, the costs involved, and the opportunities to improve the reporting systems. MARC was the first to identify for the Congress and the White House the structural issues that would prevent CMS from actually implementing reporting in April 2010, and has been the leading proponent of reforming the reporting process to a more streamlined and functional process to benefit both the government and the private sector.

II. The Legislative Arena – Introduction of the Medicare Secondary Payer Enhancement Act (MSPEA)

MARC has also been the lead association on working towards reforming the MSP statute to allow for streamlined MSP claims resolution, as well as to achieve numerous other improvements to the Medicare Secondary Payer Act. Among its many accomplishments in this area, MARC has achieved the following:

MARC
Medicare Advocacy Recovery Coalition

a. June 2009

MSP Reform Stakeholder Summit

MARC organized and ran an all day stakeholder summit on MSP issues, bringing together every conceivable interest group from the trial lawyers to the leading corporations of America, to develop a legislative package that would both be politically achievable as well as would produce substantive improvements to the MSP process. With over 50 interest groups in attendance, the summit procedures as clear outcome and the commitment of all attendees to support a legislative package going forward.

b. July 2009-February 2010

Drafting Legislative Proposal and Securing Lead Sponsors

During the fall of 2009, MARC drafted a legislative reform proposal, called the Medicare Secondary Payer Enhancement Act (MSPEA), circulated the draft among stakeholders to ensure their input, and secured bi-partisan Congressional sponsors in the House of Representatives. MARC also navigated important budget considerations in drafting its bill to eliminate fiscal concerns and ensure that its proposal would be budget neutral. During this period, MARC also closely monitored the progress of the Health Care Reform legislation, both for opportunities and risks associated with MSP.

c. March 2010

Introduction of H.R. 4796

In March 2010, MARC assisted with the introduction of H.R. 4796, the MSPEA, by Congressmen Patrick Murphy (D-Pa) and Tim Murphy (R-Pa). MARC members also participated in a Washington fly-in, meeting with dozens of Congressional offices. As a result of that effort, and follow on advocacy by the MARC Coalition and its members, over a dozen other members of Congress have co-sponsored the MSPEA, and many more will soon join the bill as co-sponsors. MARC has also worked with Community stakeholders to obtain over 500 letters of endorsement from an incredibly broad spectrum of individuals, companies and associations.

d. May 2010

Senate Companion Bill to H.R. 4796

MARC has begun work with the Senate on a companion bill to H.R. 4796. MARC is in the process of securing a sponsor for the bill, and is working towards introduction of the Senate version of the MSPEA in June 2010.

"MARC needs the help of every NAMSAP member to generate advocacy letters to their individual Congressional Representatives showing strong support for H.R. 4796. "

Join MARC in Advocating for H.R. 4796!

MARC needs the help of every NAMSAP member to generate advocacy letters to their individual Congressional Representatives showing strong support for H.R. 4796. MARC is particularly focused on adding co-sponsors who serve on relevant Committees of Jurisdiction -- Ways & Means and Energy & Commerce.

MARC
Medicare Advocacy Recovery Coalition

To simplify the process, MARC has provided on their website an electronic letter of support that will be delivered directly to your House leader. All you need to do is click on this link http://tinyurl.com/2bl6y7x, complete the required information and hit the SEND MESSAGE button. You will receive an e-mail receipt notifying you that your letter has been received by the office of your designated House Representatives.

If MARC is successful, H.R. 4796 will accomplish the following benefits for the Medicare Secondary Payer Community:

- Revise the flow of information so parties know how much is owed to Medicare before settling;
- Create a right of appeal for conditional payments for any party who disagrees with the MSP calculation;
- Establish a clear statute of limitations for Medicare to pursue its recovery claims (three years);
- Adopt a sensible MSP recovery threshold (so that Medicare does not spend excessive taxpayer money pursuing a claim than the claim is actually worth);
- Remove the requirement that Medicare beneficiaries disclose sensitive personal ID numbers (Social Security and Medicare numbers).

We have a brief window of opportunity to work with MARC to pass this legislation. Your support for the MSPEA/H.R. 4796 is needed today!

Don't forget– click on http://tinyurl.com/2bl6y7x and send your letter of support today!

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MARC
Medicare Advocacy Recovery Coalition

Abstract: "Considering Medicare's Interests: Why Medicare Set Asides Must be Codified"

Original Author: Jason D. Lazarus, Esq.
Abstract by: Dean Blackaby

Issue: Parties are struggling to comply with the Medicare Secondary Payer Act because Medicare has chosen to utilize a mechanism – the Medicare set-aside. For the workers' compensation parties, guidance exists not in the form of statutes but rather in the form of "intricate guidelines" and "FAQs." No guidance of any kind is available to liability parties.

Without codification, parties are subject to arbitrary determinations by CMS and have no clearly defined appellate procedure to challenge such determinations.

Background: The author explores several of the complicating factors that contribute to the unsettled legal landscape including the lack of uniformity among workers' compensation settlements, the lack of clarity and uniformity of MSAs, the costs and delays associated with the settlement process. The complications only grow in the liability context where workers' compensation guidelines are frequently used despite the very different nature the two systems.

The current guidelines for workers' compensation are discussed with reference to CMS memoranda as well as the Frequently Asked Questions. This discussion takes place in the context of acknowledgments made by CMS in the *Protocols* litigation. Specifically referenced is CMS' admissions that no legal requirement to use an MSA exists and that review exists only when Medicare services are denied. Lazarus also quotes the troubling words of Ed Welch who suggests that a CMS determination approving an MSA is not a "formal action of the agency" and consequently, may not even be binding upon CMS.

The liability cases present an even greater challenge. The author refers to the only CMS reference available – CMS' April 22, 2003 memo. He also notes that what review that does take place is limited to only those regional offices which voluntarily review liability MSAs. As many have recognized, MSAs in the liability context are further complicated by policy limits and well-established legal concepts such as contributory negligence. The author's discussion and rationale follows closely the discussion explored by Professor Rick Swedloff in "Can't Settle, Can't Sue."

Prior Efforts to Codify the MSA Process: An interesting but rarely discussed aspect of this issue is taken up when Lazarus recounts previous efforts* to legislatively address the issues and obstacles created by the Medicare Secondary Payer Act.

The rationale for codification is presented as a two-part foundation. The first pillar is the need for some semblance of procedural due process. The lack of a right to timely appeal under the current reason for codification. Without an appeal right, parties have absolutely no recourse against arbitrary decisions by CMS relating to the amount of set aside.

The second pillar is constructed from a public policy perspective. Codification in the liability context could help offset the difficult financial straits of the Medicare Part A trust fund by defining accountability and creating a process for settlement that would allow parties to settle but avoid the double dipping path that spurred heightened scrutiny in the first place. The stakes are significant – Medicare makes up 12 percent of the federal budget. By 2030, an estimated 79 million individuals will be Medicare beneficiaries.

The Tort Trial and Insurance Practice Section (TIPS) of the Amercian Bar Association approved a recommendation to the association urging Congress to codify set asides noting a "unique level of accord" among the "Plaintiff's bar, the Defense bar, the insurance industry and workers' compensation agencies and adjudicators" regarding the need for codification. The recommendation was prompted by the need for certainty, predictability and efficiency; concerns about professional liability exposure and the risk of non-compliance manifested in the phrase "double damages."

Continuation of Abstract: "Considering Medicare's Interests: Why Medicare Set Asides Must be Codified"

Original Author: Jason D. Lazarus, Esq.
Abstract by: Dean Blackaby

A 2005 resolution from the ABA House of Delegates made similar recommendations and offered to turn funds over to CMS to release the parties from liability; suggested the creation of standardized forms to expedite approval;

In May 2006, Florida legislator, Rep. Clay Shaw (R) introduced HR 5309 which was intended to create an exception to Medicare Secondary Payer requirements for certain workers' compensation settlements and provide for the satisfaction of such requirements through the use of qualified Medicare set-asides under workers' compensation agreements. HR 5309 failed.

May 2009, Rep. John Tanner (D-Tenn.) introduced HR 2641 which was similar to HR5309. Organized labor as well as WILG (a group composed of workers' compensation claimants' attorneys) testified on the behalf of the bill emphasizing the potential improvement in the process that the legislation would bring. The bill also provided for "safe harbors" and the ability to comply in the context of a compromised claim. Specifically included was a review process to bring accountability to the process. HR 2641 met a similar fate.

While Lazarus acknowledges that, to date, these efforts have focused on workers' compensation system, he suggests this could also be the framework for a liability set-aside system. He suggests that liability MSAs should incorporate the concepts of net recovery such as those set forth in the Ahlborn case.

Conclusion: Because CMS has been unable to fix the problems, legislation is needed to bring certainty, predictability, and efficiency to the set-aside process which was mandated by Medicare without statute or regulation referencing MSP set-asides or providing for a CMS settlement review process. It is imperative that any legislation include an appellate process to avoid arbitrary determinations and should outline parameters for both workers' compensation and liability cases.

(*The article was written prior to the introduction of HR 4796 in March, 2010.)

"Legislation is needed to bring certainty, predictability, and efficiency to the set-aside process which was mandated by Medicare without statute or regulation "

Ethics and Standards Committee:

The Ethics/Standards Committee is currently inactive, having accomplished their task of establishing a document on Ethics which was accepted by the Board of Directors. They have also completed a proposed document on Standards which has been submitted to the current Board for review.

Membership Committee:

In an effort to encourage NAMSAP members to renew, the Membership Committee contacted those members who were had not renewed. Currently, there are there are 492 current NAMSAP memberships. The breakdown is as follows:

Professional Members = 309;
Associate Members = 7;
Partner Professional Members = 22;
Partner Reps = 154.

Education Committee:

The Education Committee is currently working on the 2010 NAMSAP Annual Meeting and Educational Conference, which will be September 29th and 30th, in Washington, DC.

Webinar Sub-committee:

The Webinar Sub-Committee is looking for speakers. If you are interested in giving a webinar, please go to the NAMSAP website and fill out a speaker request form. Speakers interested in presenting should complete the webinar request form located here.

Medicare's Wheelchair and Scooter Benefit

For Medicare to cover any of the wheelchairs and scooters listed below, the claimant's physician must state that the claimant needs this equipment because of their medical condition or injury. Medicare will pay 80% of the Medicare-approved amount, after the claimant meets the Part B deductible. The claimant will be responsible for 20% of the Medicare approved amount.

For a claimant to be eligible for any device referred to as "mobility assistive equipment" or "MAE" (cane, crutches, walkers, manual wheelchair, power wheelchair, scooter), the equipment must be needed in the claimant's home.

To get mobility assistive equipment, the claimant must meet the following requirements:

- Have a health condition where they need help with activities of daily living like bathing, dressing, getting in or out of bed or chair, moving around, or using the bathroom.
- Be able to safely operate and get on and off the wheelchair or scooter.
- Have good vision.
- Be mentally able to safely use a scooter, or have someone with them who can make sure the device is used correctly and safely.

The equipment also must be useful within the physical layout of the claimant's home (i.e., not too large for home).

Additional provisions may apply based on case specifics.

For more information, please call Medicare at (800) Medicare.

Sponsorship and Partner Information

Platinum Sponsors

Medivest professionally administers medical custodial accounts, provides premier MSA Allocations and other innovative solutions to preserve, protect and stretch settlement dollars in workers' compensation and liability disputes. www.medivest.com

Protocols, LLC is a multidisciplinary consulting firm that specializes in medical settlement planning for all parties involved in workers' compensation and personal injury liability cases -- from the simple to the complex. The Protocols team of experts - medical, benefits and legal - works together with clients to create a comprehensive plan for the projected medical care of an injured person. We also advise on the best and most cost-effective way to finance this care. Among Protocols specialty services are medical cost projections, life care planning and Medicare set-aside analysis, allocation and administration.

Gold Sponsors:

Experea Healthcare
MedAllocators, Inc.
Crowe Paradis Services Corporation

Silver Sponsors:

The Center for Lien Resolution
The Center for Medicare Set-Aside Administration
The Center for Special Needs Trust
Concierge Medical and Risk Consultants
Corvel
KP Underwriting, LLC
LASIE
NuQuest/Bridge Pointe
PMSI Settlement Solutions
Procura Management Inc. (A Healthcare Solutions Company)
Rising Medical Solutions

TIPS

1. **Medicare Parts A & B do not cover**:
   - Acupuncture
   - Attendant/Custodial Care
   - Dental Services
   - Diabetic Syringes/Insulin
   - Eye Exams/Glasses (exception made for frames and lenses after cataract surgery)
   - Nursing Home Care
   - Transportation
   - Routine Care (meaning that there is no underlying disease or symptom for which service was provided)
   - Routine Yearly Physical Exams (exception made for coverage starting after 01/01/05. A one time physical examination within the first six (6) months will be provided if the person has Part B)
2. **Disability** is determined according to the criteria in 1382c(a)(3) of the Social Security Act. To be considered "disabled", an individual must have a diagnosed medical condition (including mental illness) that is expected to last at least 12 months or to result in death. Further, the individual must be unable to engage in substantially gainful activity due to his or her medical condition.

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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 first quarter 2010 newsletter to be 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, or call her at (802) 849-2956.

"Letters to the Editor":
In addition to contributing authors, every interested member is invited to send their "Letters to the Editor", or provide comments on articles that are published in the newsletter.

CMS Updates:

One of the primary goals of the Communications Committee is to provide updates on each CMS regional office. If you have an experience with a particular regional office of CMS, please submit those to April so we can share those with other members of NAMSAP.