Resolving Claims with Medicare and Medi-Cal Beneficiaries
Jessica G. Heppenstall, Esq.
David P. Ramirez

What is the difference between Medicare and Medi-Cal?

Medicare is a federal program which provides basic health insurance to everyone over age 65, and people under age 65 but are eligible for Social Security Disability benefits. Medi-Cal (also Medicaid) is the California Medicaid program which provides health coverage for people with low income and limited ability to pay for health coverage.

Why do we care if a plaintiff is receiving these benefits?

Often in personal injury lawsuits, a plaintiff is receiving or has received these benefits related to the injury. Medicare and Medi-Cal have a right to recover from a third party for medical services provided to a beneficiary.

Medicare Reimbursement Obligations

The Medicare Secondary Payer (MSP) statute specifically created reimbursement requirements in cases involving a plaintiff’s medical expenses for injuries covered by Medicare and later paid to the plaintiff as an award or settlement. (42 U.S.C. §1395y(b)(2).) Medicare can seek recovery of its payments from any party, including a liability insurer. If a plaintiff is a Medicare beneficiary, the insurer must report to Medicare once the claim is resolved through settlement, judgment, or award.

The insurer must reimburse Medicare if the beneficiary fails to do so. This is so even if the insurer has already reimbursed the beneficiary or a third party. (42 CFR § 411.24(i)(1).)

Medi-Cal Reimbursement Obligations

Medi-Cal also has a right to recover against a third party who injured a Medi-Cal beneficiary. (Welf & Inst. Code § 14124.71 et seq.)

If a settlement is reached and funds are paid to a Medicare or Medi-Cal beneficiary without reimbursement to these agencies, you can be on the hook to pay again! Not to worry, there are several steps to ensure these liens are satisfied. Starting at the outset of litigation will save you time and sanity when it comes time to cut the check.

How to Handle Medicare and Medi-Cal liens in Reaching a Settlement

Determine at the outset of litigation if the plaintiff is a Medicare/Medi-Cal recipient. Discovery is always the first opportunity to take advantage of this process. Send initial discovery requests asking if plaintiff is receiving any government benefits. Plaintiff is required to report this information. Ask for a case identification number or social security number. Confirm the plaintiff’s Medicare/Medi-Cal at the time of mediation or reasonable anticipated execution of the release. Notify plaintiff’s counsel to produce lien information prior to settlement and include as terms to the release plaintiff’s obligations to notify Medicare/Medi-Cal.

It is best to negotiate payment terms wherein plaintiff reimburses any outstanding liens from settlement funds. Funds should not be distributed to plaintiff or counsel until the final reimbursement amounts have been received.

Medicare will send a Final Demand Letter including the final lien amount owed. Cases
involving Medicare will often include two settlement checks. One check is made payable to plaintiff and attorney, while the second check is made payable to Medicare directly in satisfying the outstanding lien.

Medi-Cal will also send a final lien letter. However, unlike matters involving Medicare beneficiaries, settlement drafts may include Medi-Cal beneficiaries and the Department of Health Care Services (DHCS) in lieu of a final letter. Including DHCS on the settlement draft then relieves the insurer of reimbursing Medi-Cal and places the responsibility on the beneficiary plaintiff.

Weeding through the Medicare and Medi-Cal process can be a headache, and the key to streamlining the process is starting at the outset of litigation.

**ABOUT THE AUTHORS**

Jessica Heppenstall graduated from California Western School of Law in 2008. Ms. Heppenstall’s focus is on general liability and personal injury. Contact her at 858.263.4120 or jheppenstall@tysonmendes.com.

David Ramirez is a Senior Counsel at TYSON & MENDES, LLP, and primarily represents clients in complex litigation, including construction defect, insurance law, property disputes, and product liability. Mr. Ramirez was recently named as a "Top Lawyer" in California for "Litigation" in the June 2014 issue of American Lawyer Media.