

Industry News Bulletin

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In a continuing effort to keep our clients and the Industry advised of current developments related to Medicare and the need to protect Medicare's interests, we offer our summary of a recent U.S. Court decision.

ATTORNEYS BEWARE!

The United States of America filed a complaint against Paul J. Harris, an attorney representing a James Ritchea in a liability action, to recover money damages owed to the Centers for Medicare and Medicaid Services for conditional payments made on behalf of Mr. Ritchea for medical services. (United States of America v. Paul J. Harris, United States District Court, Northern District of West Virginia, Civil Action No. 5:08CV102)

The total liability settlement was for \$25,000.00, and Medicare had made conditional payments of \$22,549.67. However, based upon the amount and details of the settlement, Medicare had agreed to reduce its conditional payments and demanded payment of only \$10,253.59. That amount was not paid to Medicare within the statutorily-required sixty-day time period, and accordingly, this complaint was filed.

The defendant attorney filed a Motion to Dismiss and argued that a lawyer, in representing a client, cannot be held individually liable under 42 U.S.C. § 1395y(b)(2) when he or she distributes settlement funds to the clients. The court disagreed with that argument, and on November 13, 2008, issued an Order denying the Defendant's Motion to Dismiss.

In its decision, the Court discussed the Medicare Secondary Payer Statute (MSPS) extensively and the right of the government to recover from any entity that has received a primary payment, including an attorney. Generally, from our experience, it appears that many plaintiffs' attorneys in liability cases have erroneously taken the position that the MSPS enforcement was limited to Workers' Compensation claims, that Medicare would not be seeking recovery from the attorneys, and that Medicare would not be bringing actions to collect conditional payments on small settlements. The Harris case has proven otherwise.

While the Harris case involves only recovery of conditional payments, it should be noted that the failure to adequately consider and protect Medicare's future interests may, likewise, result in liability for the attorney.

As always, we at Gould & Lamb appreciate your business and welcome your feedback and comments. Should you have any questions related to this Industry News Bulletin or desire a copy of the Order referenced herein, please contact T. Gordon Lamb, our Senior Compliance Officer, at (866) MSA-FILE (672-3453), Ext. 1411.