



CARR ALLISON

Are You Ready for MSP and Section III Compliance?

Thomas S. Thornton, III
CARR ALLISON
100 Vestavia Parkway
Birmingham, Alabama 35216
(205) 822-2006
tthornton@carrallison.com

BIRMINGHAM ▪ DOTHAN ▪ FLORENCE ▪ GULFBOROY ▪ MOBILE ▪ TALLAHASSEE



CARR ALLISON

Firm Profile

Since its establishment, the name Carr Allison has been synonymous with outstanding professional service. While civil litigation is the backbone of the firm's legal work, the firm focuses on the defense of transportation litigation, complex litigation and employment liability.

Carr Allison's six offices offer a talented team of lawyers who represent a diverse mix of local, regional and national clients. The firm provides a geographic network that is designed to provide clients with superior legal services in a cost effective manner. This geographic network directly benefits clients in both efficiency and quality.

Carr Allison insists on the traditional value of service and accepts no less than the highest quality of legal services for each client. One of the primary concerns of Carr Allison is the delivery of cost efficient legal services. Databases and document sharing ensure that the client receives the most expedient service available. Direct contact via the internet and other networks is also available for faster communication.

Carr Allison's relationships with clients are based on trust, an understanding of each client's business and a commitment to achieving its goals. This philosophy directly benefits our clients in both the efficiency and caliber of legal services we provide. Our mission is to provide quality legal services at a reasonable cost, to every client, every time.

BIRMINGHAM ■ DOTHAN ■ FLORENCE ■ GULFPORT ■ MOBILE ■ TALLAHASSEE



CARR ALLISON

Education

B.A., Lenoir-Rhyne College

J.D., Cumberland School of Law

Practice Areas

Premises Liability/Retail

Dram Shop

Personal Injury

MSP/ Section II Compliance

Workers' Compensation

Transportation

Professional Profile

- Admitted to Alabama State Bar
- Admitted to United States District Court, Northern District of Alabama
- Member: Birmingham Bar Association
- Member: Alabama Defense Lawyers Association and Defense Research Institute
- Frequent Speaker on Premises Liability, Dram Shop, Workers' Compensation Law and related best practice issues.

Thomas S. Thornton, III
Carr Allison
(205) 949-2936 direct dial
(205) 822-2057 facsimile
tthornton@carrallison.com



BIRMINGHAM * DOTHAN * FLORENCE * GULFPORT * MOBILE * TALLAHASSEE



Introduction

- The Ingredients
 - Center for Medicare & Medicaid Services (CMS)
 - Medicare Secondary Payer Act (MSP)
 - Section 111, Medicare, Medicaid & SCHIP Act of 2007 (MMSEA)



What is CMS

- “Tiny” Agency that runs Medicare and Medicaid
- Was HCFA (Healthcare Financing Admin) until 2001
- Only \$800 Billion a year in spending
- 5,000 employees – 10 regional offices (including Chicago)
- 55,000 contract employees. Most with Blue Cross plans—contractors that actually run the program
- CMS-BALTIMORE: is a policy shop—does what Congress directs. Contractors run day-to-day



What is CMS

- Approx. \$430 Billion a year in Medicare; \$370 Billion Medicaid; \$10 Billion S Chip
- 44.5 million in Medicare; 37.2 million seniors; 7.3 million disabled
- MSP Savings in 2007: workers' comp \$93 M; disability (much from insurers) \$1.8 B



History

- Medicare 1965
 - Purpose
 - Problem
- Medicare Secondary Payer Act 1980
 - Purpose
 - Problem
- Medicare Set-Aside 2001
- The Medicare Modernization Act of 2003
 - Purpose
- Statistics published by the Center for Medicare Services in 2005
- Section 111, of the Medicare, Medicaid & SCHIP Act of 2007



Present

- Overview of where we are
 - MSP vs MMSEA
 - Purpose
 - Avoid
 - Recoup
- General Requirements
 - MSP
 - MMSEA
 - Identify
 - Report
 - Protect
 - Fines/Damages



General Requirements-Identify

- Identify Medicare Claimants:
 - Methods:
 - Query System
 - Model Language Form

General Requirements-Report

- Report:
 - MSP:
 - Report a payment, settlement or judgment to CMS to obtain final demand for reimbursement of conditional payments.
 - MMSEA:
 - What:
 - Every quarter, a **Responsible Reporting Entity** will report to CMS, during its designated seven day window every quarter, any and all payments, settlements or judgments relating to a Medicare recipient relating to a general liability claim.
 - A **Responsible Reporting Entity** will also be required to report **Ongoing Responsibility for Medical** treatment obligations under a state's workers' compensation plan with a Medicare recipient.



General Requirements-Report

- Report:
 - MMSEA:
 - When:
 - General Liability:
 - » Any and all settlements, judgments or other payments made after January 1, 2010, with a Medicare recipient must be reported by the designated **Responsible Reporting Agent** on behalf of the RRE
 - Workers' Compensation:
 - » Any and all workers' compensation claims which are considered "open" as of January 1, 2009.



General Requirements-Report

- Report:
 - MMSEA:
 - Thresholds:
 - January 1, 2010 until December 31, 2011: \$5,000.00
 - January 1, 2012 until December 31, 2012: \$2,000.00
 - January 1, 2013 until December 31, 2013: \$600.00
 - January 1, 2014 until time is over: \$0.00



General Requirements-Protect

- Protect:
 - Required to reimburse Medicare for any and all conditional payments made by Medicare for medical treatment relating to the Medicare Recipient/Plaintiff's claim.
 - Medicare Set Aside and future exposure to MSP Manual §50.5
 - There should be no recovery of benefits paid for services rendered after the date of a liability insurance settlement. However, the entire amount of a settlement is subject to recovery, whether the liability payment is made at the time of settlement or over a period of time agreed to by the parties in a structured settlement.



General Requirements- Fines/Damages

- Fines/Damages
 - Failure to report, \$1,000.00 a day per claim.
 - Interest for failure to reimburse Medicare within 60 days of receipt of demand.
 - Double damages if Medicare pursues legal action.



Concerns for the Industry:

- Determination of Responsible Reporting Entity Status
- Assess and assign exposure
- Exam internal protocols and strategies for investigating and documenting claims
- Exam protocols and strategies for evaluating, reserving and settlement of claims
- Impact on litigation of cases



CARR ALLISON

Responsible Reporting Entity

- Definition
- Registration
 - Timing
 - Elements

BIRMINGHAM ▪ DOYHAN ▪ FLORENCE ▪ GULFPORT ▪ MOBILE ▪ TALLAHASSEE



CARR ALLISON

Assess and Assign Liability

- Identify the players
- Responsibility for fines
- Renewals

BIRMINGHAM ▪ DOTHAN ▪ FLORENCE ▪ GULFPORT ▪ MOBILE ▪ TALLAHASSEE



Exam internal protocols and strategies for investigating and documenting claims

- Is less more?
- Determination of exposure
- New claim handling protocols
 - Query function
 - Signed Acknowledgment
 - Are we prepared to fight?



Exam protocols and strategies for evaluating,
reserving and settlement of claims

- Protection of Center for Medicare's interest
- Timing of settlements
- Future exposure
- Thresholds
- Releases



Settlement/Litigation

- Burden upon defense bar
- Burden upon plaintiff's bar
- Trial and judicial system
- Mediation/contingent agreements
- Manipulation
- Importance of ICD 9 Codes

