



## **WHITE PAPER**

White Paper: You Can't Refer a Case and Wash Your Hands Clean of Obligations to Reimburse Medicare

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If you take nothing else from this, when you refer a case to another firm you need to make sure you have 3 things: 1) A written fee agreement; 2) A copy of the lawyer's malpractice insurance policy declarations and 3) Proof that the lawyer has engaged Synergy to resolve Medicare Conditional Payment obligations. The government takes its reimbursement rights seriously and is willing to pursue trial lawyers who ignore Medicare's interest. On November 4<sup>th</sup>, 2019, The United States Attorney for the District of Maryland announced that a Baltimore-based law firm paid the United States \$91,406.98 to resolve allegations that it failed to pay back Medicare for conditional payments that had been paid on behalf of firm clients. The press release indicates that the firm had entered into a joint representation agreement with co-counsel who in turn did not reimburse Medicare at settlement. According to U.S. Attorney Robert K. Hur, **"Plaintiffs' attorneys cannot refer a case to or enter into a joint representation agreement with co-counsel and simply wash their hands clean of their obligations to reimburse Medicare for its conditional payments."** He went on to say, "We intend to hold attorneys accountable for failing to make good on their obligations to repay Medicare for its conditional payments, regardless of whether they were the ones primarily handling the litigation for the plaintiff."

The DOJ went on to say **"[t]his settlement reminds attorneys of their obligation to reimburse Medicare for conditional payments after receiving settlement or judgment proceeds for their clients. This is no less true for plaintiffs' attorneys who refer cases to co-counsel or jointly represent plaintiffs."** This is an issue that must be addressed as the case is being referred or signed up. It can't wait or be ignored as the DOJ is very serious about enforcing these obligations and you don't want to find your firm on the wrong end of a DOJ Medicare settlement.

Similarly, in March of 2019, the United States Attorney for the District of Maryland announced that a Maryland personal injury law firm had agreed to pay the United States \$250,000 to settle claims that it did not reimburse Medicare for payments made on behalf of a firm client. As part of the settlement, the firm "also agreed to (1) designate a person at the firm responsible for paying Medicare secondary payer debts; (2) train the designated employee to ensure that the firm pays these debts on a timely basis; and (3) review any outstanding debts with the designated employee at least every six months to ensure compliance."



This is the third such settlement in the last two years. Back in June of 2018, the U.S. Department of Justice announced a settlement with a Philadelphia personal injury law firm involving failure to reimburse Medicare. The firm agreed to start a “compliance program” and the DOJ stated that this “settlement agreement should remind personal injury lawyers and others of their obligation to reimburse Medicare for conditional payments after receiving settlement or judgment proceeds for their clients.” The U.S. Attorney’s office also stated, “When an attorney fails to reimburse Medicare, the United States can recover from the attorney—even if the attorney already transmitted the proceeds to the client. Congress enacted these rules to ensure timely repayment from responsible parties, and we intend to hold attorneys accountable for failing to make good on their obligations.”

Consequently, in today’s complicated regulatory landscape, a comprehensive plan for Medicare compliance has become vitally important to personal injury practices. Lawyers assisting Medicare beneficiaries are personally exposed to damages and malpractice risks daily when they handle or resolve cases for Medicare beneficiaries. Synergy can be your resource for total Medicare Compliance.