



Settlements at twice the cost? A federal court declares private insurer entitled to double damages for conditional payments

By Michael H. Weier ■ June 12, 2015

A federal court has declared Medicare is not the only entity that has a right to reimbursement for conditional payments of healthcare treatment costs. In *Humana Medical Plan, Inc. v. Western Heritage Insurance Company*,¹ a federal judge summarily granted Humana double damages – that is twice the amount of the healthcare costs it paid – against Western Heritage for failure to provide reimbursement of conditional payments. Though the case involved a personal injury claim, the analysis and significant potential liability is applicable to workers' compensation matters.

The Medicare Second Payor Act (MSP Act) affords secondary plans a remedy against primary payers who fail to satisfy its obligation to pay for healthcare treatments or to reimburse conditional Medicare payments. Under the MSP Act, Congress provides a first cause of action to the U.S. Government (i.e., Medicare or Medicaid).² Congress also grants a second cause of action for double damages with no particular plaintiff.³ Workers' compensation programs beware: the federal statute not only demands reimbursement of conditional payments to Medicare, it requires reimbursement of twice the monetary amount of conditional payments made by a private insurer under contract to cover Medicare benefits.

The relevant facts of *Humana v. Western Heritage* may be reduced to its essence. Humana, a private insurer and an authorized Medicare Advantage Organization (MAD), offers plans under contract with the Centers for Medicare & Medicaid Services (CMS) to cover specified Medicare benefits.

Mary Reale, a Humana Advantage Plan enrollee, sustained a slip and fall injury at Hamptons West. Ms. Reale received medical treatment for the residuals of the slip and fall injury treatment for which her healthcare providers billed Humana nearly \$75,000.

Ms. Reale subsequently filed a personal injury lawsuit against Hamptons West. Western Heritage, Hamptons West's premises liability insurer, settled all liability issues for \$115,000. In settlement, Ms. Reale attested she had no outstanding Medicare liens or any claim against settlement proceeds. Additionally, a letter from CMS confirmed it had no record of processing any Medicare claims on behalf of Ms. Reale.

Prior to completion of the settlement documents, Western Heritage

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Failure to issue reimbursement exposes the workers' compensation insurer or self-insured employer to non-discretionary double damages



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discovered Humana had lien rights and attempted to include Humana as a payee on the settlement check. Ms. Reale opposed the amount of Humana's lien. As a result, Western Heritage issued payment to Ms. Reale with the proviso that she and her attorney would be responsible for satisfaction of Humana's lien.

When Humana and Ms. Reale could not agree upon the lien amount, Humana sued Western Heritage in federal court seeking reimbursement from the insurance company for double damages under the MSP Act.

The federal court declared MADs, such as Humana, have a private cause of action under MSP Act. In the written decision, the court stated:

"MSP Act explicitly states that Medicare, as the secondary payer, may not make payment when 'payment has been made or can reasonably be expected to be made under a workmen's (sic) compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under a no fault insurance,' all of which are considered to be primary plans under the plain meaning of the statute."⁴

The court noted Western Heritage entered into a settlement agreement with Ms. Reale to resolve all personal injury claims against Hampton West. The judge reasoned, the settlement agreement ". . . demonstrates Western Heritage's responsibility under the MSP Act to reimburse Humana for the Medicare benefits it paid on behalf of (Ms.) Reale. Thus, Western Heritage is a primary payer under the provisions of the MSP Act and is responsible for reimbursing Medicare benefits Humana advanced, even in light of its agreement with Ms. Reale settling all claims."

The court further found statutory double damages applied because Western Heritage had not reimbursed Humana for medical expenses advanced on behalf of Ms. Reale. The court stated, "Western Heritage's . . . ignorance of any payments advanced by Medicare are unavailing, as the record clearly reflects Western Heritage was, in fact, aware that Humana, a Medicare Advantage Organization, had advanced payment of medical expenses on behalf of (Ms.) Reale."

Humana v. Western Heritage is an extremely important case to the workers' compensation community. First, it illustrates that a private insurer authorized to issue payments for benefits covered by Medicare has a statutory right to reimbursement from an insurer or self-insured employer of workers' compensation benefits. Second, it reveals failure to issue reimbursement exposes the workers' compensation insurer or self-insured employer to non-discretionary double damages. Finally, it shows a declaration from CMS that it has no record of any payments issued on behalf of Medicare is not a shield against liability for reimbursement.

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Settlements at twice the cost? (continued)

Workers' compensation administrators are well-advised to inquire whether Medicare or any private insurer under a Medicare Advantage or other Medicare program plan have issued conditional payments prior to settling and discharging responsibility for medical treatment. ■

¹ Case No. 12-201123 – Cooke/Torres, U.S. Dist. Ct., S.D. Florida, March 16, 2015.

² 42 USC Sec 1395y(b)(2)(B)(iii).

³ 42 USC Sec. 1395y(b)(3)(A).

⁴ See, 42 USC sec. 1395y(b)(2)(A)(ii).

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