

THE
INSIDER'S
GUIDE *TO*



AVOIDING
(LIABILITY)
MSAS
AND FUTURE
MEDICARE ISSUES

FOR PLAINTIFF ATTORNEYS ONLY

The Insider's Guide to Avoiding MSAs—For Plaintiff Attorneys Only

By Jack L. Meligan, RSP, BCFE, MSCC, CMSP-F

What if I told you that it IS entirely possible to avoid an LMSA—MEDICALLY LEGALLY, and PERMANENTLY in cases where you might think (or a defense attorney or an MSA Allocation company has told you), that your client absolutely will have to create one? Approximately 67% of the claimants and plaintiffs we counsel achieve that very result.

However, many attorneys that we encounter have adopted a potentially dangerous policy for their firm or practice when it comes to addressing future settlement-related, Medicare-allowable, cost issues. Their policy is to basically ignore it. But as the saying goes, ignorance is no defense under the law.

When resolving Medicare conditional payment liens for trial attorneys and their clients, it's a natural next question for us to ask about the future settlement-related Medicare costs and what the trial lawyer has decided about the need to address those issues. If the plaintiff has incurred past Medicare bills (as demonstrated by a Medicare conditional payment lien), are all those past treatments going to end at settlement? Or are there going to be future settlement-related treatments, and thus the potential for prohibited cost-shifting to Medicare?

The law says Medicare is prohibited from paying for services when a primary payer has paid or can reasonably be expected to promptly pay ([see 42 U.S. Code § 1395y\(b\)\(2\) and 1862\(b\)\(2\)\(A\)\(iii\)](#)), *except "conditionally."* So, it's a natural question to ask an attorney, what about the future medicals? We get a number of immediate responses like, "that's an MSA thing that you're going to talk to me about and I'm just not interested. I'm just going to ignore that until there's actual law or actual proof that Medicare is either requiring MSAs or that they're doing something

else that makes it an issue that I need to consider."

But if the law (since 1980) says that Medicare is prohibited from paying when a primary payer or plan (read "insurance company or self-insured") has paid or can reasonably be expected to pay, and Medicare has erroneously paid post-settlement bills, can Medicare not seek repayment of those "conditionally" paid bills? And/or deny payment of subsequent bills for those same services? We have proof that may be exactly what Medicare is now doing.

So, if your policy as a lawyer or a firm is to simply ignore this, that may be dangerous. And the reason it may be dangerous is that we have identified at least a dozen attorneys and law firms across the country that have, as we call it, suffered a punch in the nose from Medicare by ignoring these Medicare payback issues. In my videos, I talk about trial lawyers who have been sued, suspended or even disbarred over ignoring or mishandling Medicare conditional payments issues. Why did that happen?

Well, they all had one thing in common. Their policy was to ignore the law on this issue and to even outright ignore the past Medicare conditional payments payback issue.

I can understand an attorney wanting to ignore future Medicare because you don't want one extra dollar coming out of your client's settlement than needs to. But with regard to past Medicare conditional payments, that law is clear. Medicare gets that money back at the time of settlement or shortly thereafter. You need to pay it back. And continuing to ignore dealing with past Medicare conditional payments, that's an absolute ticket to one of these bad situations that I've referenced in my videos about trial lawyers being sued, suspended, or disbarred.

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I have just uncovered new information that reveals that Medicare evidently looks at post-settlement, incident-related service payments (that Medicare shouldn't have paid) as also having been paid conditionally. ([Click here to view a very unusual CMS Conditional Payments Notice. One off? Maybe. We will have to watch and see ...](#)) What this may mean is that when it comes to Medicare, it's all conditional payments, both past and future. You deal with the past by resolving the Medicare conditional payments lien. How do you deal with the future? Don't ignore it. It's obvious that ignoring or bungling Medicare conditional payments has not worked out very well for at least a dozen or so attorneys across the country.

The way to address the future Medicare bills question is to attack it head on. And that starts with exploring **AVOIDANCE**. I have lectured and published on **THE 3 WAYS TO AVOID AN MSA**. And that's really what we sell at The Plaintiff's MSA & Lien Solution. It says Plaintiff's MSA in our name, but here's the backstory. We're not selling Plaintiff's MSAs. We're selling **AVOIDANCE** of Plaintiff's MSAs. Because in our mind, **the best Plaintiff's MSA is NO MSA**. No MSA at all. And doing so without jeopardizing the plaintiff's future Medicare benefits, or creating a long-tail liability for you, the trial lawyer.

AVOIDANCE IS EASY

That's why your first discussion with us always begins with our initial strategy, which is **MSA AVOIDANCE**. I discovered and pioneered the **3 Ways to Avoid** approach. We sell that service for \$479. Our service is a concise guide. We teach you the **FIRST WAY** so you can do it for your clients. Don't worry—it's fairly simple, and a template is provided.

Ways 2 & 3 to avoiding MSAs—well, you'll have to come back to us for further help with these—but the **FIRST WAY** is a powerful strategy for you and your clients to employ in order to completely avoid an MSA, medically. And it's backed by a substantial government authority.

We believe that at least two-thirds of claimants across the country can probably completely **AVOID** an LMSA medically or legally, judging by the results on our cases over the last 2 years. But you probably can't avoid it by sticking your head in the sand and ignoring it. At least not without risking loss of future Medicare benefits to your clients, or risking loss or suspension of your law license. You **CAN** avoid it by tackling it head on. But that means you need to step up. Let's have a phone discussion and identify whether there's a potential payback problem (or not) in terms of your client's future Medicare bills for services related to the injuries and/or conditions that were (or are going to be) the subject of their settlement. If there is a potential problem, then we continue the discussion with, "Just how does the Medicare law apply to my client?" And, "What can my client do to avoid this?"

By tackling it head on, two thirds of the time I maintain you're going to be able to deliver to your client complete avoidance of an LMSA, medically or legally. If we are successful, the benefit will be that you have helped your client obtain the Holy Grail. **AVOIDANCE**. Which means, **NO MSA IS NECESSARY**, or a **\$0.00 MSA Allocation**. Result? Your client doesn't have to put any money at all aside for future Medicare bills. Isn't that better than ignoring this issue and then having it sitting in a file in your office cabinet, waiting for the day when it becomes clear that ignoring Medicare conditional payments both past and future was not such a great idea? Especially since we've already identified a dozen or so attorneys and law firms that have been punched in the nose over this issue?

My fear is that there is a tidal wave of post-settlement conditional payment demands, or, at a minimum, payment denials ([Click here to see a Medicare Summary Notice showing denial of payment](#)), coming from Medicare, and that there is going to be a virtual tsunami of plaintiffs and claimants calling trial attorneys across the country and saying, "I'm being denied benefits from Medicare, and I thought you told

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me I could just ignore this since there wasn't any law requiring me to do anything about it. How come Medicare can now deny paying my bills? How am I going to pay these bills when I have no money left from my settlement?"

So, the purpose of this guide, the **INSIDER'S GUIDE TO AVOIDING MEDICARE—FOR TRIAL LAWYERS ONLY**, is to give you an explanation of all of this so that you can consider the latest information we have discovered and then decide for yourself—ignore it, or take it head on?

When you call us to discuss your client's case, we will qualify your client and then coach you on how to acquire our 3 Avoidance Strategies, which are included in our "3 WAYS TO AVOID" toolkit. It's available for you to order at: <https://plaintiffmsa.com/order-the-three-ways-to-avoid-an-lmsa-toolkit/?page=toolkit>, or by direct phone call to our office at 888-MSA-PLTF (888-672-7583).

Don't ignore this issue and risk having your good name added to the list of trial lawyers that have taken a punch in the nose over Medicare issues.

CONCLUSION: **AN OUNCE OF PREVENTION ...**

Employing simple avoidance measures today costs a lot less than dealing with expensive Medicare issues months or years down the road.

"When I brought my claimant's medical records to be reviewed by PMLS for the purpose of performing an MSA Allocation Study, the result was that the MSA was nearly the entire net settlement. Luckily, the Medicare experts at PMLS had a game plan to avoid the MSA entirely, and it worked. I received a legal opinion that determined my client did not have to cut into their net settlement with an MSA and still protected their future Medicare benefits."

—Monty L. Cain, Esq., Cain Law Office, Oklahoma City, OK

"The professionals at PMLS stand alone in settlement planning and saving MSA dollars for my clients. They work with plaintiffs—and plaintiffs only—and have been leaders in advancing the art and providing protection for those who need it most. PMLS has my unqualified recommendations and endorsement."

—Mark R. Bocci, Esq., Law Offices of Mark R. Bocci, Lake Oswego, OR, Member, Inner Circle of Advocates

"These folks really know what they are doing—saved one of my clients from potentially overfunding their voluntary Liability MSA to the tune of \$247,538!"

—Neil Jackson, Neil Jackson & Partners, Portland, OR, Immediate Past President Oregon Trial Lawyers Association



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