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Hearing on "Protecting Medicare with Improvements to the Secondary Payer Regime"

Before the Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
United States House of Representatives

June 22, 2011

Chairman Stearns, Ranking Member DeGette, and members of the Subcommittee:

Thank you for your leadership in holding this important hearing. I greatly appreciate the opportunity to testify on how the Medicare Secondary Payer (MSP) system impacts Medicare beneficiaries and to share some ideas on how the system could be improved to better serve beneficiaries and the Medicare Trust Fund.

My name is Jason Matzus, and I am a lawyer who represents many Medicare beneficiaries in claims against third parties. In my capacity as a lawyer for beneficiaries, I have first-hand experience with many of the unintended consequences of the MSP system. While I fully agree with the underlying principle of MSP – to repay the Medicare Trust Fund for health care it has covered if another source has agreed to pay for that care through a judgment or settlement – I can tell you directly that the MSP process as it is structured today harms beneficiaries, and in turn, postpones, and in some instances eliminates, reimbursement to the Trust Fund.

Background

By way of my background, I am a partner in the law firm of Raizman Frischman & Matzus, P.C., based in the Pittsburgh area represented by Congressman Tim Murphy of this Committee. Since entering my law practice, I have handled hundreds of personal injury claims, including those resulting from automobile accidents, truck accidents, medical mistakes, airplane accidents, construction site and industrial accidents, premises liability, and defective products. I also speak

extensively across Pennsylvania on the topics of personal injury law, insurance law, trial presentation techniques, and trial strategy and tactics. Currently I also serve as an Adjunct Professor of Law at the University of Pittsburgh School of Law.

How is the MSP Process Actually Affecting Beneficiaries?

Let me explain how I see the MSP process actually working in the cases my colleagues and I handle. In my experience, it is harming beneficiaries, and ironically and unfortunately, harming the Trust Fund as well. The foremost problem that I and my clients encounter in resolving claims is that the Centers for Medicare and Medicaid Services (CMS) is running the process backwards. As has been explained, Medicare will not provide a "Final Demand Letter" specifying the amount that must be reimbursed to the Trust Fund from settlement or judgment proceeds, until <u>after</u> the case has been settled and the attorney reports the settlement of the case to Medicare. This poses obvious problems for every interested party, including Medicare.

Medicare's recovery process in this regard creates significant obstacles in getting cases settled. It denies everyone of necessary and critical information. It negatively impacts claim resolution and causes more cases to go to trial simply because nobody has a reliable final number from Medicare of what the Trust Fund is owed. This ultimately results in <u>less</u> money being recovered by Medicare, which is obviously contrary to one of the goals of the MSP system. Thus, the recovery process actually works against the goal of recovering as much money as possible for the Trust Fund.

Another significant problem involves the extreme delay in getting Final Demand figures from Medicare, which ultimately impedes the parties' ability to distribute money back to Medicare and to the beneficiary. Distributions are delayed even after a case is settled or has gone through trial. It is not uncommon for it to take six months to one year to resolve the MSP portion of a claim. Indeed, my firm has handled dozens of such cases for beneficiaries when it took that long. In the

aggregate, this delay has to translate into millions of dollars of lost revenue annually for the Medicare Trust Fund, simply as a function of the time-value of money. Along the way, beneficiaries get frustrated. Given the quagmire of the MSP process, there are certain cases where the hassle of dealing with MSP causes everyone to walk away from otherwise legitimate cases before they are brought – harming both beneficiaries who cannot recover, as well as the Trust Fund, that now has no settlement from which to collect. That cannot be right.

Let me give you a specific example I just learned about – I have a colleague who has just settled a case for $400,000 on behalf of a Medicare beneficiary in her mid-80s. Although the case has been settled for weeks, the settlement funds sit in an attorney escrow account waiting for final demand figure from Medicare. The beneficiary is in failing health, and it is unclear that by the time Medicare is able to provide a final demand the beneficiary will still be alive.

Every day of delay in getting the settlement into the hands of the beneficiary not only harms the Trust Fund, but can have severe financial consequences for the beneficiary as well. For example, in my firm's work with beneficiaries, we have had instances where the Medicare beneficiary faced the prospect of foreclosure on their home because of the delay in getting the Medicare reimbursement resolved. This can happen when beneficiaries are counting on the settlement proceeds to reimburse them for their co-pays and uncovered medical services, the costs of which have forced them to skip mortgage payments. Fortunately, we have avoided that calamity, but it is a real consequence visited upon Medicare beneficiaries simply because of the delay in the current Medicare claim recovery process.

Conclusion

Congressional action is needed to empower Medicare to provide a final demand at the time of settlement, so that everyone would know what is owed and would be able to settle accordingly. If that were to occur, the beneficiaries that I represent would be far better off than they are today, and

the Trust Fund would recover many millions of dollars more (and faster) than is the case today. Let me be clear – we are ready and able to reimburse the Trust Fund – but we need your help to clear the bureaucracy out of the way, so that we can do so quickly.

One month ago, I had the privilege of meeting with Representative Tim Murphy along with approximately 30 others lawyers from the Pittsburgh area on this issue. While our group represented a broad cross-section of stakeholders, we all shared a common perspective when it came to how the MSP program is actually working, or more precisely, how it is not working. Everyone in the room wanted to reimburse the Trust Fund in those cases where payment was required – we simply were prevented from doing so by Medicare. As we asked Congressman Murphy last month, I join with my colleagues in respectfully urging you to allow us to quickly and efficiently resolve MSP claims. We need to do so, not only for our own interests, but for the sake of beneficiaries who deserve better treatment, as well as for the Trust Fund, which so badly needs the funds.

Again, thank you for the opportunity to testify today before the Subcommittee. I welcome any questions you have.