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**PROPER PLANNING MAY CREATE PEACE OF MIND**

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**MEDICARE SET-ASIDES APPLY TO LIABILITY INSURANCE—ARE YOU READY?**

The President signed the Medicare, Medicaid and SCHIP Extension Act of 2007 on December 29, 2007. Section 111(8) of the Act amends the federal Medicare law as it relates to protecting Medicare's status as a secondary payor and its interest in the outcome of a settlement. Section 111 directly impacts plaintiffs receiving a third-party liability settlement who also receive Medicare or, are expected to receive Medicare within 30 months. A Medicare set-aside arrangement will no longer be required just for workers compensation cases.

The new law applies to liability insurance (including self-insurance), no fault insurance as well as workers' compensation. CMS is working on creating program rules.

Section 111(7) creates a new responsibility for insurance companies to report to CMS certain information about payments made. If the insurer fails to comply they are subject to a daily fine of \$1,000.00. This provision of the new law will be implemented by January 1, 2009.

**Current MSA Requirements:**

CMS is requiring plaintiffs who

receive a liability settlement to create a 'set-aside arrangement' (MSA) so that Medicare's interests are protected. See 42 U.S.C. 1359y.(b).

**MSA Requirements Effective July 2009:**

Trial lawyers will be required to determine what portion of the settlement represents payment for future medicals that are reimbursable under Medicare. The sum placed in a MSA is used to pay for services until exhausted. Then, a MSA accounting will be provided to CMS at which time it should resume paying for the plaintiff's medical expenses. It is recommended that attorneys follow the requirements for MSAs in workers' compensation cases found on CMS's website until further instructions are published.

**Educate Yourself:**

Learning more about MSAs will enhance your practice, prevent malpractice and allow you to provide value-added service to your clients. Our firm is preparing a CLE to be approved by The Florida Bar. The CLE can be hosted in the comfort of your office as a 'lunch-n-learn.' Be the first to schedule the CLE by contacting Hillary Josephs, our Business Development Coordinator.

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**Firm Facts:**

Stephanie is a Former Chair of The Florida Bar Elder Law Section. Our firm is proud to be a Business Friend of Eagle sponsor for the Florida Justice Association.

**Practice Areas**

**Estate & Incapacity Planning**

- ◆ Last Will & Testament
- ◆ Probate & Trust Administration
- ◆ Revocable Trust
- ◆ Durable Power of Attorney
- ◆ Designation of Healthcare Surrogate
- ◆ Quit Claim Deed
- ◆ Living Will

**Emergency & Advocacy Services**

- ◆ Emergency & Standard Guardianships
- ◆ Long Term Care Facility Residents' Rights
- ◆ Medicaid Applications & Appeals

**Government Assistance**

- ◆ Special Needs Trusts
- ◆ Representation of Special Needs Trust's Trustees
- ◆ Protecting Lawsuit Proceeds and Inheritances While Preserving Medicaid and SSI Eligibility
- ◆ Exceptions to Medicaid Lien Recovery