

# Section 111 Bulletin: The Real Scoop on the Purported Insurer Duty "to Protect Medicare's Interest" and Pay for Future Medicals

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June 28, 2013

Last month, in an article published in the DRI magazine *For the Defense*, we wrote that "confusion and misinformation regarding liability insurer obligations to Medicare have complicated and in some instances delayed or obstructed settlements in bodily injury cases"—particularly when a settlement compensates a Medicare beneficiary for bodily injuries that may require future medical care. Because we continue to encounter defense counsel and consultants who mistakenly believe that insurers are obliged to reimburse Medicare for its payment of a claimant's future medical expenses if they fail either to allocate damages to future medicals or to establish a Medicare set aside account, we offer our subscribers this link to our DRI article: "Dispelling Medicare Myths in Tort Settlements". In the article, we explain that even though a liability insurer has a statutory obligation to reimburse Medicare for "conditional payments," Medicare law defines conditional payments as payment of medical items or services provided before settlement. Medicare has no statutory authority to make a conditional payment of medical expenses incurred *after* a reported liability settlement or to demand that the insurer reimburse Medicare for future expenses that Medicare may pay, and it serves no valid purpose to scare insurers into thinking otherwise. Moreover, it is well settled that insurers are never obligated to establish a Medicare set aside account, although Medicare offers a process for reviewing such arrangements in the workers' compensation context.

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## Practice Areas

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Health Care  
Section 111 Insurer Reporting and MSP  
Reimbursement

*Our Section 111 Team routinely covers the Section 111 NGHP Town Hall Teleconferences held by CMS, and we send periodic Section 111 Bulletins to our clients addressing notable Town Hall discussions and other Section 111 developments. We also maintain a searchable electronic database of Town Hall transcripts back to October 2008. Please let us know if you would like more information about any of the Section 111 topics discussed in this Section 111 Bulletin. You also may access our Section 111 webpage and other Section 111 Bulletins and articles we have published at <https://www.wileyrein.com/practices-section-111.html#Section111Bulletin>.*