

And from my perspective Medicare's interests can't possibly have been reasonably considered under that approach. So because CMS hasn't officially stated that set asides or a claim settlement allocations are recommended in liability settlements and they haven't published any procedures as such.

I was wondering if you could advise me as to the best way a party settling a liability case especially a self insured like my company to ensure that Medicare's interests are being quote/unquote reasonably considered.

(Barbara Wright): Actually I saw your question come in and I meant to address it in the ones at the beginning. If you go back on some of the earlier transcripts we've done short points on liability set asides. The AAJ is correct in that Section 111 does not require liability set asides as we said at the beginning of this call 111 is a new and separate reporting requirement.

And all it is a reporting requirement but we also said Section 111 doesn't change any preexisting obligations. The idea of set asides is based on the fact that Medicare is prohibited from making payment where payment has already been made.

So that if you have a settlement judgment or other payment that takes into account in any way future medicals that settlement judgment award or other payment should be exhausted or appropriately before Medicare is billed for the associated services.

We do not have the same formal process for liability set asides that we have for worker's comp set asides. The worker's comp one is a recommended process. It's not a required process and keep in mind we're talking about a recommended process not the fact of whether or not you should or shouldn't have a set aside in a particular case.

For liability we don't have the staffing or resources right now to do that type of program for every single liability settlement or even with certain dollar thresholds what we've told our regional offices is if they believe there are significant dollars at issue in a particular case and the workload of that particular regional office permits.

They may review a proposed set aside amount for liability. The fact that they declined to review in a particular case does not create any type of safe harbor. So you're back to an obligation that has existed essentially since 1980.

And if an entity has not been taking this into consideration and taking steps whether it's to do a set aside or some how else take care of it. It's something they now need to be documenting and taking care of. Simply it is a - it's an obligation that existed far in advance of Section 111.

(Ryan Proser): Okay and just as a follow up. So should the regional office not have the resources to formally review a set aside or a claims settlement allocation that I would want to put together in one of my releases and I go out to a third, independent third party an agent or an independent physician or whomever.

They do an independent analysis. And either a zero dollar amount or some small portion of the total settlement award is dedicated as a set aside and plaintiff's counsel is agreeable to that. We attach that as an exhibit or an amendment to the assigned release upon settlement. In CMS' eyes is that going to be sufficient?

(Barbara Wright): We as I said we don't have any formal process. I can't give you an answer on that. It does sound like one way to appropriately document what you've gone

through and that you've made a reasonable consideration. Can we say more than that? No.

(Ryan Proser): Okay thanks.

(Barbara Wright): I mean I can't give you any bright line rule to help you out here.

(Ryan Proser): All right well, you know, I guess we'll just adopt those steps and, you know, see how things turn out. But we just wanted to create a paper trail to show CMS that we're, you know, taking the necessary steps in case they, you know.

Some times subsequent to our settlement come back and try to, you know, seek an over payment from us because we're the primary payer of the self insured. So we're just trying to come up with ways to insulate ourself in case that happened.

(Barbara Wright): But that's what I - goes back to what I just said. You need to at least think about having a process in place where you're documenting why or why not there are future medicals and how you took care of that. And our anecdotal experience is a lot of entities were simply not even considering the possibility of future medical.

(Ryan Proser): Okay I think you've answered my question. I appreciate it.

(Barbara Wright): Okay.

John Albert: Operator, its 3:00. I think we're going to have to go. We most of us here have additional meetings.