



**Service:** MSPA (Medicare Secondary Payer Accreditation)  
**Module:** LEARNING MODULE 9  
*Navigating Settlements Involving Medicare Beneficiaries and Reasonable Expectation Claimants*  
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### **Summary**

This module, taught by Brendon De Souza of Sanderson Firm, focuses on the practical application of Medicare Secondary Payer (MSP) compliance principles in settlements involving Medicare beneficiaries and reasonable expectation claimants. This session builds on previous modules and is designed to help participants navigate complex settlement scenarios while meeting federal compliance requirements.

### **Key Topics Covered:**

1. Determining Beneficiary Status:
  - The first step in compliance is identifying whether a claimant is a Medicare beneficiary.
  - Medicare eligibility can stem from age (65+), Social Security Disability Insurance (SSDI) enrollment, or specific medical conditions like Lou Gehrig's disease or end-stage renal disease.
2. Reasonable Expectation Claimants:
  - For non-beneficiaries, the analysis extends to reasonable expectation status.
  - Medicare guidelines classify individuals nearing Medicare eligibility (e.g., 62.5 years old, SSDI applicants, or those with end-stage renal disease) as reasonable expectation claimants.
3. Conditional Payment Obligations:
  - Parties must identify and reimburse Medicare for conditional payments made for claim-related medical treatment.
  - Both traditional Medicare (Parts A & B) and private Medicare plans (Parts C & D) have equal rights to recover payments, potentially leading to lawsuits if obligations are unmet.
4. Medicare Set-Aside (MSA) Requirements:
  - MSAs are required when settlements involve future medical expenses for Medicare-covered care.
  - The module emphasizes preparing an MSA even if it is not submitted to CMS for review, as failure to allocate funds can expose parties to risks.
5. Settlement Agreement Language:



- Best practices include specifying ICD-9/ICD-10 codes, defining responsibilities for conditional payment reimbursements, and documenting future medical care plans.
  - Agreements should prevent disputes and ensure clear delineation of liabilities among parties.
6. Compliance with Reporting Obligations:
- Section 111 reporting is critical for Medicare beneficiaries. Failure to report Total Payment Obligation to Claimant (TPOC) data can result in financial penalties.
7. Risk Mitigation Strategies:
- Recommendations include securing waivers, using clear settlement terms, and directly addressing liens to avoid legal and financial repercussions.

**Practical Applications:** The module incorporates real-world scenarios, such as settlements involving claimants with complex medical conditions or disputed Medicare liens. It outlines strategies for reducing risks through thorough documentation, proactive lien resolution, and adherence to federal MSP requirements.

By the end of Module 9, participants are equipped to handle settlements involving Medicare-related considerations confidently. They gain the ability to evaluate beneficiary status, address payment obligations, and draft settlements that comply with MSP laws while protecting all parties' interests. This comprehensive approach ensures that MSP compliance is integrated seamlessly into settlement negotiations and final agreements.

### **Learning Objectives**

1. Identify the criteria for determining if a claimant is a Medicare beneficiary or a reasonable expectation claimant under Medicare Secondary Payer (MSP) guidelines.
2. Understand the implications of Medicare beneficiary status on settlements, including reporting, conditional payment reimbursements, and Medicare Set-Aside (MSA) requirements.
3. Explore best practices for addressing conditional payments and reporting obligations in settlement agreements.
4. Analyze scenarios involving reasonable expectation claimants and determine appropriate MSP compliance strategies.
5. Develop effective settlement agreement language to protect parties from future MSP-related liabilities.

### **Primary Takeaways**



1. Medicare beneficiaries and reasonable expectation claimants require careful consideration of MSP compliance obligations, including reporting and conditional payments.
2. Non-Medicare beneficiaries with no reasonable expectation status do not trigger MSP compliance obligations, simplifying settlement processes.
3. Settlement agreements must address MSP compliance pillars explicitly, including agreed-upon diagnosis codes and reimbursement responsibilities.
4. Conditional payments can arise from traditional Medicare and private Medicare Advantage plans, and both must be addressed to avoid litigation risks.
5. Future medical care considerations, including MSAs, must be incorporated into settlements to ensure Medicare's interests are adequately protected.

### **Course Outline**

- 1) Introduction to Medicare Beneficiary and Reasonable Expectation Claimants
  - a) Medicare Beneficiary Determination
    - i) Criteria for enrollment (e.g., age, SSDI, end-stage renal disease).
    - ii) Tools for verification (query process, Medicare hotline).
  - b) Reasonable Expectation Claimants
    - i) Criteria (e.g., age, SSDI application, end-stage renal disease).
    - ii) Considerations for settlements involving these claimants.
- 2) MSP Compliance Obligations in Settlements
  - a) Reporting Obligations
    - i) Section 111 reporting requirements for Medicare beneficiaries.
    - ii) Implications of failing to report (e.g., penalties, litigation).
  - b) Conditional Payments
    - i) Recovery rights of traditional Medicare and private Medicare plans.
    - ii) Processes for addressing conditional payment liens and appeals.
  - c) Medicare Set-Asides
    - i) Future medicals being released
    - ii) Claimant requiring claim-related, Medicare-covered medical expenses
- 3) Addressing MSP Obligations in Settlement Agreements
  - a) Best Practices for Settlement Language
    - i) Inclusion of ICD-9 and ICD-10 diagnosis codes.
    - ii) Allocation of reimbursement responsibilities.
  - b) Future Medical Care Considerations
    - i) Funding MSAs for Medicare beneficiaries and reasonable expectation claimants.
    - ii) Addressing scenarios where MSAs are non-submittable but necessary.



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- 4) Scenarios and Practical Implications
  - a) Claims Involving Medicare Beneficiaries
    - i) Comprehensive MSP compliance: reporting, payments, MSAs.
    - ii) Addressing both traditional and private Medicare liens.
  - b) Claims Involving Non-Medicare Beneficiaries
    - i) Simplified settlements with no MSP obligations.
    - ii) Scenarios where MSP exposure may still arise.
  - c) Unique Situations
    - i) Impact of state-specific statutes on MSAs (e.g., Georgia's 400-week cap).
    - ii) Settlement language for protecting parties in hybrid claims.
  
- 5) Conclusion
  - a) Importance of Comprehensive Settlement Planning
  - b) Ensuring Protection Against Future MSP Liabilities

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