

Accident Victims Should Know about Medicare Subrogation

Q: I was injured in an automobile accident. Medicare paid my medical bills for that, but now I can't get my case settled. Why not?

A: Many factors can make it difficult for a plaintiff such as you to be compensated for your injuries, but one has to do with the way in which Medicare has begun to enforce its subrogation rights.

Q: What is subrogation?

A: Subrogation is the substitution of one creditor for another. In personal injury cases, a medical insurer that has paid an injured party's medical bills may have subrogation rights. In your case, this means that Medicare can "stand in your shoes" and request reimbursement for your medical bills from, for example, the insurance company of the person responsible for your injuries. Private insurance companies also have subrogation rights, but Medicare subrogation rights work differently.

Q: What is unique about Medicare subrogation?

A: According to statute (written law), Medicare can recover what it pays for accident-related medical expenses from the person who caused the accident or that person's insurance company. Most, if not all, private medical insurers (such as Blue Cross) and most automobile insurers that pay bills through medical payments coverage also have subrogation rights, but they are based on contract rather than statute.

In recent years Medicare has developed new regulations that impose significant sanctions, including a \$1000 per day fine for failure to honor its statutory subrogation rights. These regulations became effective in 2010. This fine could apply to you, as the Medicare recipient, your attorney and the insurance company of the at-fault party.

While the \$1000 per day civil sanctions are new to Medicare subrogation, the obligation is not. If yours is a substantial case where Medicare benefits may have to be paid in the future, the subrogation requirements are even more complicated because Medicare must set aside funds to satisfy its obligation.

Because of these potential sanctions, insurance companies may not be willing pay settlements until they have a final payoff amount from Medicare. Unfortunately, the process of obtaining documentation from Medicare necessary to satisfy its subrogation rights can take months. This may be further complicated by disputes about whether treatment is related to a particular

accident claim.

Q: Is it possible for Medicare to waive or reduce its subrogation rights?

A: Yes. Once Medicare has determined the amount it believes it is owed, it will require payment from you or from the at-fault party's insurance company within 60 days. If the at-fault party does not have insurance, Medicare may require payment from your uninsured/underinsured insurance company. If you dispute the amount owed, you can pay the amount Medicare demands and then request a reduction and/or a waiver, or you can withhold payment until your request is ruled upon. Medicare will then determine whether or not to waive or reduce its subrogation rights. This process may take more than a year. If you withhold payment and Medicare ultimately denies the request for a waiver or reduction, it will impose interest and perhaps fines. Even if Medicare ultimately agrees to waive or reduce its rights, you may wait a year or more for a refund.

Q: Does Medicaid have the same subrogation rights?

A: Yes. Medicaid recipients are subject to similar statutory subrogation rights. However, in Ohio, the Ohio Department of Jobs and Family Services has contracted with the Ohio Tort Recovery Unit to handle these matters and the Ohio Tort Recovery Unit can generally resolve them within a month or so.

Q: Do private insurance carriers have subrogation rights?

A: Yes. Generally they have subrogation rights contained in their insurance contracts that should not be ignored. However, because these subrogation rights have to do with contracts and not written law, they are not subject to the civil fines Medicare can impose. Health insurance carriers and auto- med pay carriers are generally able to make their subrogation claims within a couple of weeks, and they generally are subject to further negotiation.

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This "Law You Can Use" column was provided by the Ohio State Bar Association (OSBA). It was prepared by Toledo attorney Stuart F. Cubbon of Cubbon & Associates.

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