



**THE MEDICARE SECONDARY PAYER ACT:  
ITS IMPACT ON WORKERS' COMPENSATION  
AND  
LIABILITY CLAIMS**

**By**  
**James S. Pikala**  
**Richard C. Nelson**  
**Raymond J. Benning**  
**Christine L. Tuft**  
**Donald G. Fernstrom**  
**Joseph M. Nemo III**  
**Peter J. Williams**  
**Aaron P. Frederickson**  
**Patty L. Wisecup**  
**Susan E. Larson**  
**Michael D. Carr, Of Counsel**

ARTHUR, CHAPMAN, KETTERING, SMETAK & PIKALA, P.A.

500 Young Quinlan Building, 81 South Ninth Street, Minneapolis Minnesota 55402  
Telephone (612) 339-3500 Fax (612) 339-7655 [www.arthurchapman.com](http://www.arthurchapman.com)

**THE MEDICARE SECONDARY PAYER ACT:  
ITS IMPACT ON WORKERS' COMPENSATION AND LIABILITY CLAIMS**

**TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>II.</b>	<b>HOW TO PROTECT MEDICARE'S INTEREST .....</b>	<b>2</b>
	A. Settlement of Conditional Payments.....	2
	B. Protecting Medicare's Future Interests .....	3
	1. What Must Be Included in Determining the Total Settlement Amount? ....	3
	2. What Constitutes a Reasonable Expectation of Medicare Benefits? .....	4
<b>III.</b>	<b>INTERPRETING MEDICARE SECONDARY PAYER ACT.....</b>	<b>4</b>
	A. Federal Regulations Interpreting the MSP.....	4
	B. CMS Policy Memorandums and the MSP .....	5
	C. Case Law Interpretation of the Medicare Secondary Payer Act.....	7
<b>IV.</b>	<b>PREPARING AN EFFECTIVE MEDICARE SET ASIDE TRUST ALLOCATION .....</b>	<b>9</b>
	A. The Medicare Set Aside Trust .....	9
	B. Review and Analysis of Medical Records .....	10
	C. Prescription Drug Calculations .....	11
<b>V.</b>	<b>CONSIDERATIONS IN LIABILITY ACTIONS.....</b>	<b>12</b>
<b>VI.</b>	<b>ENFORCEMENT ACTIONS UNDER THE MSP.....</b>	<b>13</b>
	A. Direct action by the United States. ....	13
	B. Private Cause of Action. ....	13
<b>VII.</b>	<b>PRACTICE POINTERS WHEN DEALING WITH CMS.....</b>	<b>14</b>
<b>VIII.</b>	<b>CONCLUSION .....</b>	<b>15</b>