

STREAMLINING SETTLEMENTS WITH MEDICARE BENEFICIARIES: THE ASBESTOS MALIGNANCY ALTERNATIVE RESOLUTION PROCESS

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Resolving asbestos cases often involves dealing with Medicare reporting and adjusting case values due to liens. A recent program, endorsed by Medicare and supported by plaintiffs and defendants alike, provides predictability and efficiency to the settlement of cases and claims with certain asbestos claimants. The AMP program offers significant benefits to asbestos litigants, insurers, and claims professionals.

WHAT IS AMP?

AMP (Asbestos Malignancy Alternative Resolution Process) is a program started by the Garretson Resolution Group (GRG) with the approval and support of Medicare to achieve efficiencies and predictability with respect to Medicare Secondary Payer (MSP) Act issues that arise in asbestos settlements with Medicare Beneficiaries. Plaintiff law firms must register to participate in AMP, and upon registration all firm asbestos clients are enrolled. To date over 60,000 claimants have been enrolled in the AMP program.

AMP offers significant benefits to plaintiffs, defendants, and attorneys. Resolution of cases and claims under AMP satisfies Medicare Part A and/or Part B fee-for-service MSP recovery claims for past and future care. Under the AMP Program Rules, participants' Medicare liens are capped at a set (non-minimum) amount. A pre-determined percentage of every settlement the plaintiff enters is allocated to Medicare recovery; the designated recovery amounts are cumulative and tracked; and repayment to Medicare is processed through the program. Settling defendants do not have to submit MMSEA reports on the settlements involving AMP participants, and defendants will not be involved in repayment of any applicable Medicare liens. Additionally, while not part of AMP, GRG has another program in place that deals directly with Part C/Medicare Advantage providers to inform those carriers of AMP resolutions so they can recover from those settlements where applicable. Thus, defendants also do not have to – and should not – report settlements to Part C/Medicare Advantage providers when resolving a case with a plaintiff enrolled in AMP.

Although the AMP program is intended only for malignant cases, GRG has a similar program for non-malignant cases.

WHY DOES AMP MATTER?

A plaintiff's participation in AMP allows for better case value prediction and prevents a defendant from being held hostage by a high lien amount. AMP also allows for efficient settlement as defendants do not have to run Medicare beneficiary queries, wait for final demand letters, report settlements, or debate with plaintiff's counsel over release language regarding Medicare liens. It also protects defendants from issues that arise with stale zero-demand letters. Finally, a plaintiff's participation in AMP provides finality to Medicare lien issues for our clients.

WHAT PRACTICE TIPS SHOULD WE FOLLOW?

- Educate those handling your asbestos litigation and asbestos settlements about AMP now, and share a [letter](#) from The Centers for Medicare & Medicaid Services to GRG outlining AMP.
- Inquire if a plaintiff is an AMP participant before settlement negotiations begin to help you better assess case value. Ask for confirmation in writing from plaintiff's counsel that the plaintiff is an AMP participant, and maintain that confirmation in the case file.
- Caution:
 - Firm participation is not verification that a specific plaintiff is enrolled. We have found that some plaintiff firms with multiple offices may choose to enroll clients in AMP from select offices; therefore, inquire of each firm/each office/each plaintiff as to their participation in AMP.
 - Plaintiffs who are not yet Medicare Beneficiaries, or for whom Medicare has not paid any expenses, are not obligated to participate in the AMP. GRG will confirm a plaintiff's Medicare status and obtain a signed Affidavit from the plaintiff before allowing plaintiff to "un-enroll" in AMP.
- It is also wise to contact GRG and verify that the settling plaintiff is, in fact, a confirmed AMP participant: 513.794.0400 or 866.694.4446.
- Prepare AMP language for settlement releases and present to plaintiff's counsel during negotiations. Sample language, found to be acceptable and used successfully with numerous plaintiffs firms, can be accessed [here](#).

ADDITIONAL INFORMATION

To speak with an attorney with AMP experience, including case resolutions, please contact:

- **Karen Ross** | 216.696.2278 | karen.ross@tuckerellis.com
- **Vicky Vance** | 216.696.3360 | victoria.vance@tuckerellis.com

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