



ATTORNEYS AND COUNSELLORS AT LAW

July 2010

The A&G Report

I. HEALTH CARE Medicare

Our attorneys and staff are often asked questions about the qualifications and benefits under Medicare. According to a recent report by the *Journal of the American Geriatrics Society*, roughly one third of surveyed Medicare beneficiaries from across the United States considered themselves to be



generally unfamiliar with the program's benefits.

This issue will provide general information on Medicare and related topics. Future issues will explain in more detail various aspects of Medicare requirements and coverage.

CASE RESULTS DEPEND UPON A VARIETY OF FACTORS UNIQUE TO EACH CASE. NO REPRESENTATION IS MADE OR INTENDED TO GUARANTEE OR PREDICT THE OUTCOME OF A PARTICULAR CASE.

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Medicare is a government insurance plan created to help cover the health care costs of older Americans and people with certain disabilities who may be under age 65. Administered by the Centers for Medicare and Medicaid Services, Medicare coverage is divided into four parts, referred to as Medicare Parts A through D.

If you are entitled to benefits through Social Security or the Railroad Retirement Board (RRB), you will automatically be enrolled in Medicare Part A and B once you turn 65. You should be receiving your Medicare card about three months before your 65th birthday. If you are not eligible for Social Security or RRB benefits, you may purchase Medicare Part A and B coverage during certain time periods.

- **Initial Enrollment Period.** This is the 7-month period that begins three months before and ends three months after the month of your 65th birthday. So, if your birthday is in May, your Initial Enrollment Period is February through August.
- **General Enrollment Period.** You may also enroll during the months of January through March of every year thereafter.
- **Special Enrollment Period.** If you are waiting to enroll because you or your spouse are still employed and covered by a work-related health care plan, you may enroll in Medicare while you are still covered and for eight months following termination of your work and/or work-related coverage.

It is important to understand that Medicare does not cover all health care services, nor does it pay the total cost for most covered medical services or supplies. The extent of your benefits is also dependent on whether you are enrolled in Medicare Part A, Part B, or both. Medicare Part A typically pays for inpatient hospital expenses and Medicare Part B typically covers outpatient health care expenses, including doctors' fees. Several supplemental programs, authorized by the government, are designed to fill the gaps left by Medicare Parts A and B. These plans, offered by private insurance companies, are included under what is often referred to as Medicare Part C. The most recent addition to Medicare is Medicare Part D, which is designed to help cover prescription drugs.

Source: Mount Vernon Nursing & Rehabilitation Center

II.

Mass Torts Update Pharmaceuticals

Our firm has been investigating the following drugs:

1. **Avandia** (rosiglitazone) is a widely prescribed medication manufactured by GlaxoSmithKline and approved in 1999 to treat Type-2 Diabetes Mellitus. To date, more than six million people worldwide have taken the drug and Avandia generates approximately \$3.2 billion in annual sales for its manufacturer.

A study which appeared in the June 14, 2007 issue of the New England Journal of Medicine concluded that patients taking Avandia face a 43% increased risk of heart attack and a 64% increased risk of dying from heart related disease such as congestive heart failure.

2. **Cypher** and **Taxus Drug Eluting Stents** are small, lattice-shaped, metal tubes that are coated with small amounts of drugs that are inserted to hold open arteries that have narrowed due to plaque build-up caused by atherosclerosis. Once in place, stents help hold the arteries open so that the heart muscle gets enough blood.

More than 6 million people worldwide have gotten the drug coated stents, including about 3 million in the United States. At least 800,000 new patients get the stents each year, making them the most common device used to treat heart disease and one of the most common medical procedures of any kind.

However, these stents are associated with an increased risk of blood clots, heart attacks and death for a great number of patients receiving the devices.

3. **Yasmin** and **Yaz** are birth control pills manufactured by Bayer Healthcare. The generic form of these drugs, **Ocella**, is a brand marketed and distributed by Teva Pharmaceuticals. Yasmin was approved by the FDA in 2001, Yaz in 2006 and Ocella in 2008.

The Yaz group of drugs contains a compound created by Bayer called drospirenone, which is a "fourth generation" progestin. Drospirenone is believed to elevate the levels of potassium in the blood stream. Elevated levels of potassium in the blood can lead to a condition known as hyperkalemia, which can cause heart rhythm disturbances. Side effects of drospirenone and/or elevated potassium include heart attack, stroke, blood clots (including deep vein thrombosis, intracardiac thrombus, and pulmonary emboli), damaged kidneys, damaged gallbladder, damaged pancreas resulting in pancreatitis, abnormal heartbeat, and even death.

4. **Gadolinium Based Contrast Agents (GBCAs)** are commonly used in magnetic resonance imaging (MRI) and/or magnetic resonance angiography (MRA) to help obtain a detailed picture of internal organs, tissues, bones and/or vessels. GBCAs include Omniscan, Magnevist, MultiHance, OptiMARK and ProHance.

The use of GBCAs with an MRI or MRA have been associated with the development of a medical condition called Nephrogenic Systemic Fibrosis (NSF) or Nephrogenic Fibrosing Dermopathy (NFD). This condition has been observed almost exclusively in those individuals with kidney disease or renal dysfunction. NSF/NFD can cause skin to become thickened, rough and hard and often leads to limbs becoming impossible to move. In many instances, NSF/NFD is a progressive disease that leads to death.

5. **Fosamax, Zometa and Aredia** are in the category of drugs known as Bisphosphonates. These drugs are used to balance the loss of bone density caused by disease, aging or osteoporosis. In addition, some chemotherapy treatments for cancer that has advanced into the bones include bisphosphonates.

Use of these medications has been linked to jaw bone decay or osteonecrosis of the jaw (ONJ). Side effects of these drugs include jaw pain, numbness, exposed oral bones, loss of teeth and infection. To repair jaw bone damage, extensive and painful surgery is required to remove dying bone tissue.

6. **Zelnorm** (Tegaserod), manufactured by Novartis Pharmaceuticals, was a prescription medication approved for short term treatment of women with irritable bowel syndrome with constipation and for those under 65 years of age with chronic constipation. Zelnorm has been associated with an increased risk of heart attack and stroke.

Lawyers in our Mass Tort Section are working on behalf of individuals who had taken these drugs. For more information, contact Nan Parfitt at 1-800-440-0001 or by e-mail at nparfitt@ashcraftlaw.com.

III.

Workers Compensation Update

A recent Court decision in Virginia held that even though an injured worker was using methadone, he was entitled to benefits because the use of methadone did not contribute to his injury. Likewise, the consumption of two or three beers by a 19 year old during lunch break did not preclude recovery for an injury he sustained three hours later. An attorney at Ashcraft & Gerel convinced the Court of Appeals in Virginia – after the Virginia Workers’ Compensation Commission found the worker’s injury was due to alcohol consumption and denied benefits – that there was no evidence presented that the worker’s manner, disposition, speech, muscular movement, general appearance or behavior were affected and the accident was as likely attributed to youthful, poor judgment as to the consumption of two or three beers. (*Gardiner v. Superior Supply Associates, Inc.*)

Maximum Weekly Compensation Rates:

Virginia	\$895.00
District of Columbia	\$1,355.00
Maryland	\$920.00

IV.

Nursing Home Litigation Update

A jury has awarded nearly \$19 million in damages against a Brooklyn nursing home to the family of a 76-year old patient. The patient was neglected so badly that he left with more than 20 bedsores. The award was the first in New York State against a nursing home that included punitive damages.

Ashcraft & Gerel is also currently involved in nursing home and long term care litigation, representing dozens of families whose loved ones have been harmed by substandard care. Ashcraft & Gerel also represents individuals who have been harmed in group homes for

mentally disabled adults and children who have been harmed while under the care of foster care or social services agencies.

If you need additional information you can contact Sidney Schupak, Esquire or Joe Musso, Esquire at 1-800-440-0001 or by e-mail at ashcraft@radix.net.

V.

Social Security Update

Disability Benefits – New Medical Reports

A U.S. District Court reversed a Social Security Judge's decision denying benefits because of additional medical evidence submitted by the claimant. Medical treatment notes from a clinic documented that the claimant was diagnosed with mixed connective tissue disease (MCTD). The Social Security Judge was apparently unaware that the claimant had a diagnosis of MCTD and hyperlipidemia. The medical records contained findings about the claimant's mental and psychological impairments which were contrary to those of the Social Security Judge. In the new psychiatric evaluation, the psychiatrist found the claimant suffered from severe neurotic depression and mild mental retardation. No other expert evaluated the claimant for mental retardation, making these findings quite significant.

BITS AND PIECES

Crime Blotter

A New York man has been sentenced to serve four years in prison after failing to pay \$1.6 million in workers' compensation premiums. He owned an asbestos removal company but falsely claimed he had only one employee and that it was a secretary. He will be deported after serving his entire sentence Two executives with a janitorial service company have been arrested and charged with fraud and conspiracy after failing to pay \$4.4 million in workers' compensation premiums and \$1.9 million in unemployment and state disability taxes. The executives misrepresented the number of employees it had from 2000 to 2005, reporting that he and his wife were the company's only employees when there were actually hundreds of janitors working publically and privately for the company.



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