



Resolving Cases with Medicare and Medi-cal Credit to Tyson & Mendes, La Jolla, CA

What is the difference between Medicare and Medi-Cal?

Medicare is a federal program which provides basic health insurance to everyone over age 65, and people under age 65 but are eligible for Social Security Disability benefits. Medi-Cal (also Medicaid) is the California Medicaid program which provides health coverage for people with low income and limited ability to pay for health coverage.

Medicare Reimbursement Obligations

The Medicare Secondary Payer (MSP) statute specifically created reimbursement requirements in cases involving a plaintiff's medical expenses for injuries covered by Medicare and later paid to the plaintiff as an award or settlement. (42 U.S.C. §1395y(b)(2).) Medicare can seek recovery of its payments from any party, including a liability insurer. If a plaintiff is a Medicare beneficiary, the insurer must report to Medicare once the claim is resolved through settlement, judgment, or award. **The insurer must reimburse Medicare if the beneficiary fails to do so. This is so even if the insurer has already reimbursed the beneficiary or a third party.** (42 CFR § 411.24(i)(1).)

Medi-Cal Reimbursement Obligations

Medi-Cal also has a right to recover against a third party who injured a Medi-Cal beneficiary. (Welf & Inst. Code § 14124.71 *et seq.*) If a settlement is reached and funds are paid to a Medicare or Medi-Cal beneficiary without reimbursement to these agencies, you can be on the hook to pay again! Not to worry, there are several steps to ensure these liens are satisfied. Starting at the outset of litigation will save you time and sanity when it comes time to cut the check.

How to Handle Medicare and Medi-Cal liens in Reaching a Settlement

Determine at the outset of litigation if the plaintiff is a Medicare/Medi-Cal recipient. Discovery is always the first opportunity to take advantage of this process. Send initial discovery requests asking if plaintiff is receiving any government benefits. Plaintiff is required to report this information. Ask for a case identification number or social security number. Confirm the plaintiff's Medicare/Medi-Cal at the time of mediation or reasonable anticipated execution of the release. Notify plaintiff's counsel to produce lien information prior to settlement and include as terms to the release plaintiff's obligations to notify Medicare/Medi-Cal.

Continued on page 5

Published Monthly by
California Association of
Independent Insurance Adjusters



An Employer
Organization of
Independent
Insurance Adjusters

Inside this issue.....

Resolving Medicare claims	Pg. 1
President's Message	Pg. 2
News of and from our Members	Pg. 3
Sentencing update of PA	Pg. 3
Washing Machine Overflow	Pg.5
Sexual Assault by Massage Parlor employee	Pg. 6
Auto policy "resident" exclusion	Pg. 7
Fact of the month	Pg. 8

CAIIA Newsletter
CAIIA Office
PO Box 168
Burbank, CA 91503-0168
Website: www.caiaa.org
Email: info@caiaa.com
Tel: (818) 953-9200

Editor: Sterrett Harper
Harper Claims Service, Inc.
(818) 953-9200

Permission to reprint is always extended with appropriate credit to CAIIA Newsletter.

© Copyright 2014

Status Report Available
by Email and Web Only.

To add other insurance professionals to our e-mail list, please go to CAIIA.com or e-mail a request to statusreport@caiaa.com.

California Association
of Independent Insurance
Adjusters, Inc.

President's Office

5300 Orange Ave., Ste 211
Cypress, CA 90630
Email: khickey@sgdinc.com

President

Kim Hickey
SGD, Inc., Northridge, CA
khickey@sgdinc.com

Immediate Past President

Tanya Gonder
Casualty Claims Consultants, Oakland, CA
tanya@casualtyclaimsconsultants.com

President Elect

Paul Camacho, RPA, ARM, Mission Adjusters, So. Lake Tahoe, CA
mail@missionadjusters.com

Vice President

Steve Washington – Washington & Finnegan, Inc., Anaheim, CA
steve.washington@sbcglobal.net

Secretary Treasurer

Steve Weitzner – Buxbaum Loggia and Associates, Inc.
info@buxbaumloggia.com

ONE YEAR DIRECTORS

Steve Einhaus
Einhaus Adjusting Services, San Rafael, CA
steveeinhaus@gmail.com

Chris Harris
M3K Business Services, Inc., Redlands, CA
charris@m3kbusiness.com

Harry Kazakian
USA Express Claims, Inc., Encino, CA
harry@usaexpressinc.com

TWO YEAR DIRECTORS

LeeAnne Junge – Thornhill & Associates, Inc., Chatsworth, CA
leeann@thornhillandassociates.com

Peter Kofoed - PKG – Peter Kofoed Group, Murrietta, CA
pwkofoed@gmail.com

Greig Merritt – American Claim Experts, Rancho Cucamonga, CA
info@aceadjusting.com

OF COUNSEL

Mark S. Hall Esq., HALL LAW FIRM
24881 Alicia Parkway, Suite E-500
Laguna Hills, CA 92653
T. 949.297.8444
F. 949.855.6531

President's Message

I have had some time to think about what I would like to say to our members and the insurance community when I became responsible for the President's article for the monthly CAIIA Status Report. But where do I start?

Tanya, it is hard to believe that it has already been a year that you have been our president. Where does the time go? I look forward to the next year with your continued support and guidance for this organization. Thank you for your leadership.

I am honored to be the 2014-2015 President of the California Association of Independent Insurance Adjusters and I am proud to be included with the past presidents of which I have such respect for. Lucky for me that I have worked with several past presidents – Steve Tilghman, Gil Malmgren and Dean Beyer. I work with several of them now – Peter Schifrin, Doug Jackson, Don Gordon, and Phil Barrett.

What would Earle Wright, the first Association President 1947-1948, think of our association now? The CAIIA is still going strong, even though the industry is constantly changing.

My first exposure to the CAIIA was during the 14 years I worked for Acclamation Insurance Management Services (AIMS) and I have been a member for many years. My involvement in this association has continued during the five years that I have been with Schifrin, Gagnon, and Dickey (SGD). I have chaired various committees and then, a few years ago, was nominated to become the CAIIA Secretary/Treasurer.

For me, the CAIIA is a place to belong, a place to meet people in the same business as I am in, a place to learn, and a place to educate.

While growing up, I never thought I would be a claims adjuster, and certainly not an independent insurance adjuster. I started at State Farm, stayed there for 17 years, and it was at State Farm that I found I liked the technical aspect of adjusting claims and applying policy provisions and, more importantly, helping insured's recover from a loss.

As a field property adjuster at AIMS, I worked with my first real mentor, Steve Tilghman. I am thankful for the Russo family for giving me the opportunity to train and grow as an independent adjuster. It was a whole new world for me at the time.

Thank you Peter Schifrin for encouraging me to accept the CAIIA Secretary/Treasurer nomination a few years ago...and for believing in me. Moving from AIMS to SGD has been a gift for which I am grateful. You allow me to grow in this industry and my goal is to be an effective and productive president for this association. Thank you Sterrett Harper for your ongoing commitment to this organization and this industry and for always guiding us!

And now we are in a new year, with a new Board of Directors. The list of past presidents is distinguished and I have my work cut out! I am looking forward to sharing my thoughts with you over the next 11 months and I welcome any suggestions or ideas you would like to talk about. I can be reached via email at khickey@sgdinc.com, or telephone (800) 661-3067 x 200.

Thank you for your interest in the CAIIA!

Kimberley Hickey, President – CAIIA 2014-2015



Kim Hickey
CAIIA President



News of and from our Members...

DOI Curriculum Board Update

I attended the California Department of Insurance Curriculum Board Meeting on October 16th.

There remains momentum towards individual licensing for independent adjusters and there is a good chance we will see real movement on the issue in 2015.

The 2014 pass rates through June for the independent adjuster examination were 30% for first time test takers and 35% for repeat test takers. Clearly this remains a difficult test to pass.

The senate bill requiring commercial earthquake risk management curriculum did pass, and I expect to be on a committee that works on this project in 2015.

I will continue to report after my attendance at these three times a year meetings. If anyone has a question, please call or email me.

Peter Schifrin
CAIIA - Past President
818-721-4713 Direct
pschifren@sddinc.com



Happy Thanksgiving to you and yours!

From the CA DOI blog:

Sentencing update on public adjuster stealing from fire victim

By Patrick Storm

October 13, 2014 2:06 PM

LOS ANGELES, Calif. - Jaymie Marie Huizar, 47, of Rosemead, a licensed public adjuster pleaded guilty to a misdemeanor of passing non-sufficient checks totaling more than \$30,000 that should have been distributed to her client.

"Unfortunately, this homeowner was victimized twice," said Commissioner Jones. "Once when their home was damaged by fire and again when Huizar violated her fiduciary responsibility and stole from her."

In February 2012, the California Department of Insurance opened an investigation after receiving a complaint about a public adjuster who was hired by a southern California fire victim. The investigation revealed that in November 2010 Huizar, doing business as Pro-Claim Public Adjusting Company, was hired to handle the victim's fire claim for their damaged home, with the agreement that Huizar would receive 10 percent of the total insurance claim settlement.

In March 2011, the homeowner's insurance company issued a \$40,769 check for the loss payable to the victim and Pro-Claim Public Adjusting Company. After making a few initial payments to the victim, Huizar allegedly retained more than \$30,000 for her own personal use.

Huizar was prosecuted by the Los Angeles City Attorney and sentenced to two years probation, 184 hours of community labor and \$220 in court fines. Huizar is scheduled to return to court on December 26, 2014 for a restitution hearing.

GO GREEN is on vacation...

Thank you to Steve Einhaus for his contributions to the status report.



Washing Machine Overflow

Credit to: Garrett Engineering, Long Beach, CA

The homeowners' washing machine overflowed. Fortunately, they heard the water splashing, so they quickly stopped the motor and shut off the water before major damage was done. When they finished mopping up the water from the laundry room floor, they called a local appliance repair shop. The shop sent out a technician who examined the washing machine. He discovered that the tub water level sensing hose was disconnected, and he showed this to the homeowner. Then he reconnected the hose, and they watched as the machine did a test cycle with no further leaking.



The following week the homeowners ran several more loads of laundry without incident. During a later deposition, the homeowner said that there were no unusual loads or conditions that might have been out of the ordinary during that week. He also estimated that they bought the washer 12 to 14 years earlier and that there had been no service or maintenance performed prior to the first leak. Then on Friday evening, they started another load of laundry and went out to the backyard. After 30 to 45 minutes one of them went back into the house to discover water flooding not just the laundry room, but the entire home. Again, the source of the water was the washing machine. They shut off the machine, turned off the water, and began calling contractors and their insurance company. Thus began a several-week process of drying out their home and replacing their hardwood and carpeted floors. They also called the appliance repair company, who was unable to send anyone out until the following Monday. The same technician returned to examine the washing machine. He observed at that time that the level control hose was still attached. At that point, the homeowner expressed that he was ready to buy a new washing machine, and the technician made no further adjustments or repairs. The insurance company kept the washer for later analysis.

After three years of insurance and legal negotiations, GEI was assigned to examine and test the washing machine and to determine the cause of the flooding. Our expert inspected and tested the machine at an independent lab. A representative of the manufacturer was also present. He connected the machine to a domestic hot and cold water supply, a drain, and 120 VAC. He operated the machine through the completion of the fill cycle and measured the water fill level for all water level settings. The machine operated normally. He opened the top cover and inspected the water level control components. He found a very short ½ inch piece of hose in the bottom of the machine. This matched the hose that connected the pressure switch to the tank dome. This indicated that the end of the hose was sniped off by the technician to create a better connection when he reconnected the hose. This was a good thing to do because, over the years, plastic hose ends become deformed from the clamps and the widening force of the nipple.

Continued on page 5

Continued from page 4

The hose still had sufficient length. The routing of the hose was altered in that it no longer passed through a binding ring on the washer exterior. This was also a good thing to do because the binding ring could potentially exert a force that could pull off the hose. The hose was clear, so you could see inside of it. It was clear and clean. The tank dome was an air chamber on the side of the tank that connected the pressure sensing hose to the tank internal water pressure. It was semi-transparent. It appeared clean and free of debris. It was clearly not blocked because the machine filled to the proper levels in the tests.

Our expert was unable to duplicate the overflow issue in the lab. The overflows occurred at the home, so the home must have experienced one or more changing conditions. One possible cause of this intermittent overflow problem was a combination of low house water pressure and a weak fill valve spring or sticky fill valve. By design, water pressure is used to close the valve. Irrigation sprinklers can drastically lower water pressure, and this would be intermittent. Another possibility was the manual valve that supplied water to the washer was not fully opened. This restriction would cause a low-pressure problem and could be intermittent because it was reopened each time the washer was used. The fill valve required a minimum of 20 psi to close properly. If the fill valve had a weak spring or internal friction, this minimum required pressure is likely higher. Our expert doubted if debris caused a sticky inlet valve because the inlet screen to the valve was completely clean. Another possible cause was an intermittent blockage in the tank dome which was now clear. It may have been possible for soap, lint, or waterproof fabric to block the orifice, and then clear itself later when the tank emptied and dried out.

The first appliance service tag stated that the level sensing hose was found disconnected and was reconnected. The expert's inspection revealed evidence that supported this. A disconnected hose would cause the washer to overflow. The technician tested the washer following his repair, and it operated normally, as it continued to do the following week. The repair done by the appliance technician could not have caused the second flooding event that caused the flooding damage.

The cause of the flooding damage was an intermittent failure of a component of the water level control system due to transient debris and/or a low supply water pressure. It was not the appliance technician's work.

Expert of the Month: Greg Booth

Continued from page 1

It is best to negotiate payment terms wherein plaintiff reimburses any outstanding liens from settlement funds. Funds should not be distributed to plaintiff or counsel until the final reimbursement amounts have been received.

Medicare will send a Final Demand Letter including the final lien amount owed. Cases involving Medicare will often include two settlement checks. One check is made payable to plaintiff and attorney, while the second check is made payable to Medicare directly in satisfying the outstanding lien.

Medi-Cal will also send a final lien letter. However, unlike matters involving Medicare beneficiaries, settlement drafts may include Medi-Cal beneficiaries *and* the Department of Health Care Services (DHCS) in lieu of a final letter. Including DHCS on the settlement draft then relieves the insurer of reimbursing Medi-Cal and places the responsibility on the beneficiary plaintiff.

Weeding through the Medicare and Medi-Cal process can be a headache, and the key to streamlining the process is starting at the outset of litigation.

Employee Sexual Assault in Massage Parlor Not Within the Scope of Employment
Credit to Haight, Brown and Bonesteel, Los Angeles, CA

In *Baek v. Continental Casualty Co.* (No. B251201, filed 10/6/14), a California appeals court held that a massage parlor employee did not qualify as an insured for sexual assault on a client, because sexual assault was not within the scope of employment or committed while performing duties related to the conduct of the employer's business.

The employee was claimed to have touched, fondled, rubbed, etc., a client of the massage parlor while making sounds and noises of sexual pleasure. The massage parlor's claim was denied based on a professional services exclusion in the policy, which was upheld in a separate unpublished opinion on the ground that "a sexual assault that occurs during the rendering of a professional service is not injury caused by the rendering of a professional service."

The employee also sued for bad faith, arguing that allegations that he was a partner in, or employee of, the massage parlor, made him an insured under the policy. The policy covered members or partners of the insured entity, "but only with respect to the conduct of your business." Employees were covered "but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business."

The court agreed that there was no coverage or potential for coverage. Citing *Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, the court noted that although intentional torts can be causally related to employment, sexual assault is not among them, because it is not "engendered by" or an "outgrowth" of employment. Also, under *Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, if an employee's tort is personal in nature, mere presence at the place of employment and attendance to occupational duties prior or subsequent to the offense will not bring the tort within the scope of employment.

The *Baek* court found that merely because the assault occurred in a massage parlor did not require a different result:

"Although the alleged sexual assault of Jaime W. occurred during a massage, the particular acts on which liability is premised -- i.e., "touch[ing], fondl[ing], rubb[ing], grabb[ing] and squeez[ing] Plaintiff's breasts, buttocks, inner thighs and genitals, all while making and emitting moans, groans, grunts and other sounds and noises of sexual pleasure" -- indisputably were not "duties related to the conduct of [HMWC's] business" or acts of the kind Baek had been hired to perform. Instead, they represented a "stepping away" from HMWC's business because they were performed solely for Baek's own benefit, not for HMWC's. They thus cannot be said to have occurred "while performing duties related to the conduct of [HMWC's] business."

The court went on to state that allegations of negligence did not trigger coverage, because one cannot "accidentally"

*Auto Policy's Inter-Insured Exclusion Inapplicable to Unrelated Roommates**Credit to Haight, Brown and Bonesteel, Los Angeles, CA*

In *Mercury Casualty v. Chu* (No. G049132, filed 9/24/14), a California appeals court held that a "resident exclusion" in an auto policy is an unenforceable overly broad expansion of the statutorily permitted exclusion when applied to a nonrelative passenger, contrary to public policy.

Mercury's insured was in an auto accident that injured his passenger, who was also his unrelated roommate. "Residents" were included as insureds in Mercury's policy, with "resident" defined as "an individual who inhabits the same dwelling as the named insured." The policy's exclusions barred coverage for: "[L]iability for bodily injury to an insured or liability for bodily injury to an insured whenever the ultimate benefits of that indemnification accrue directly or indirectly to an insured...." Mercury characterized the effect of the provisions when taken together as a "resident exclusion" and, therefore, applicable to the insured's nonrelative roommate.

The court noted that Insurance Code Section 11580.1(c) lists the only permissible exclusions allowed under California law for an automobile liability insurance policy, and cited *California State Auto. Assn. v. Gong* (1984) 162 Cal.App.3d 518 for the proposition that: "Any exclusion not expressly authorized by section 11580.1 is therefore impermissible and invalid."

Citing *Farmers Ins. Exchange v. Cocking* (1981) 29 Cal.3d 383, as holding that resident relative exclusions are generally valid as a means to prevent fraudulent or collusive claims, the *Mercury v. Chu* court stated: "We conclude the [*Cocking*] Court's reasoning does not apply to nonrelatives 'inhabit[ing] the same dwelling' as the named insured. Cohabitation can be temporary and involve complete strangers. There is no legal basis to assume insurers face the same risk of fraudulent lawsuits. College roommates often are complete strangers who do not have direct pecuniary interests or legal responsibilities with respect to each other."

Although Insurance Code section 11580.1(c)(5) only refers to "an insured," the Mercury court drew its reasoning from the whole statutory scheme, saying that the code section "must be read together with sections 11580.06 and 280 [of the Insurance Code]." Section 11580.06 defines "insured" as "the person or persons to whom any policy subject to this article is issued as named insured and any other person to whom coverage is afforded under the terms of any such policy." But, pursuant to section 280, coverage can only be afforded to persons having an "insurable interest." "Accordingly, to be 'an insured' the nonrelative resident must have an insurable interest. [An unrelated roommate] does not have an insurable interest in the nature of the potential legal liability for [the insured's] vehicle or [his] actions as a driver."

The Mercury court acknowledged that the roommate might acquire an insurable interest while operating the vehicle as a permissive user, but found that irrelevant to a passenger. "To accept Mercury's new exclusion, we would have to place an unreasonable obligation on Pham's and Chu's other college roommates to determine how to avoid exposure to the risk of injury by Chu, who as to them, is uninsured. Certainly, Chu's roommates could decide not to ride in the same car as him but should they also be expected to avoid walking on the streets when Chu is out driving? We conclude no public policy consideration or legal authority justifies denying Pham's claim against the named insured of the policy. We find no significance in the mere status of cohabitation."

The Mercury court concluded by stating that: "The overbreadth can be cured only by rewriting (reforming) either the exclusion clause or the insured clauses, or both. We are not empowered to do so. Exclusions and exceptions contained within a policy must be construed strictly against the insurer. [] We will not rewrite Mercury's definition of 'an insured' but conclude the clause including 'residents other than' relatives and named insureds must be stricken as invalid."



It is estimated that over 95% of structural fires in Detroit are due to arson, which is fifty times the national average.