

**Workers' Compensation Medicare Set-aside Arrangements Ethical and
Legal Considerations**
(Ref: 4/22/03 Memo Q12)

In situations where a party refuses to consider Medicare's interests when settling a WC case, the "cooperative" settling party should notify the appropriate CMS Regional Office (RO). Where the RO believes it is appropriate, the RO will then send the "uncooperative" party a letter (via certified mail) conveying that Medicare's interests must be considered in the WC settlement.

The ROs will inform the "uncooperative" settling party that: "Pursuant to 42 CFR 411.24(g), CMS has a right of action to recover its payments from any entity, including a beneficiary, provider, supplier, physician, attorney, state agency, or private insurer that has received a third party payment. Moreover, pursuant to 42 CFR 411.26, CMS is subrogated to any individual, provider, supplier, physician, private insurer, state agency, attorney, or any other entity entitled to payment by a third party payer. Therefore, pursuant to 42 CFR 411.24(b), CMS may initiate recovery against the parties listed under 42 CFR 411.26 as soon as it learns that payment has been made or could be made under workers' compensation." Additionally, if Medicare's interests are not adequately considered in any settlement, then Medicare may refuse to pay for services related to the WC injury until such time as expenses for such services have exhausted the amount of the entire WC settlement.