



D. LINCOLN WOODARD  
President

CONNECTICUT  
**TRIAL LAWYERS**  
ASSOCIATION

5-2 c.

January 10, 2019

Rules Committee of the Superior Court  
State of Connecticut Judicial Branch  
100 Washington Street, Third Floor  
Hartford, CT 06106

Re: Proposed Practice Book Rule Section 13-12A and Form 217

Dear Justice McDonald and Committee members:

The Connecticut Trial Lawyers Association appreciates the opportunity to comment on the proposed rule changes involving Medicare information in personal injury matters. In general, we believe that the addition of this new form as a separate set of discovery requiring additional certification would unnecessarily duplicate most of the information provided through the existing form discovery and result in undue burden on the plaintiffs as we anticipate that plaintiffs would soon receive the request in every case involving personal injuries. While CTLA recognizes that there are mandatory reporting requirements on the part of liability and other insurers who pay these claims under 42 U.S.C. §1395y(b)(8), the necessary information for disclosure purposes could more efficiently be discovered if the following interrogatory, taken from the proposed form 217, was inserted to existing form 202:

(#) State whether you have ever been enrolled in Medicare Part A or Part B.

If the response to the previous interrogatory is affirmative, state:

- (a) The effective date(s);
- (b) Your Medicare claim number(s);
- (c) Your name exactly as it appears on your Medicare card; and
- (d) Whether Medicare Part A or Part B has paid any bills for treatment of any injuries allegedly sustained as a result of the incident alleged in the complaint.

- (#) If you are not presently enrolled in Medicare Part A or Part B, state:
  - (a) Whether you are eligible to enroll in Medicare Part A or Part B;
  - (b) Whether you plan to apply for Medicare Part A or Part B within the next thirty-six (36) months.

By adding these interrogatories to the existing standard forms, any liability insurer would have all the necessary information to submit to Medicare for purposes of their reporting requirements. For example, in interrogatory form 202 all identifying information is contained in interrogatory number 1; all expenses/medical bills are requested in interrogatory 17; interrogatory 18 requires the identity of Medicare as a payor; and in form 205, request for production 8 requires disclosure of all "documentation of claims of right to reimbursement...and all documentation of payments made by third parties."

The Committee's proposed form Interrogatory 2(a)(iv) contains a subpart requesting "amount," which would be unnecessary for several reasons. First, the amount Medicare pays is not required as part of the reporting requirements under 42 U.S.C. §1395y(b)(8); second, to the extent "amount" means the amount paid by Medicare, the information is already included in response to Interrogatory 17, 18 of Form 202 and request 8 of Form 205; and third, the amount Medicare is claiming it paid often differs from the amount the plaintiff claims as related payments and will sometimes result in an entirely separate administrative appeal process within Medicare in order to resolve. Further, Medicare's final claimed amount due at the end of a case is typically reduced to reflect the costs of procurement or even waived in limited circumstances. See 42 C.F.R. §411.37(procurement reduction); 42 CFR §411.28 (waiver).

CTLA believes that the addition of the interrogatories above would better balance the interests of insurers' need for Medicare/Social Security numbers for their reporting obligations against injured plaintiffs' privacy concerns. CTLA requests that if these additions are made to form 202 that the commentary contain language similar to the proposed Rule 13-12A and the proposed commentary, which makes clear that the only purpose of this disclosure is to allow insurers to comply with 42 U.S.C. §1395y(b)(8).

Lastly, the Connecticut Defense Lawyers Association provided a copy of its comments that asks the Rules Committee to expand the scope of this disclosure far beyond its intended purpose -- something CTLA would ardently oppose. This Committee's proposal was never intended to expand the use of this information, which includes social security numbers, for use in litigation as CDLA requests. Further, the

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Medicare reporting requirements for liability insurers have nothing to do with Medicare Part C/Medicare Advantage Plans.

Part C plans are private medical insurance that have different lien and subrogation rights from Medicare Parts A and B. The law surrounding the lien rights of Part C plans is entirely unsettled at present both in Connecticut and nationally. The lower court case cited by CDLA merely denied a motion to dismiss, and any final judgment in that case is going to be appealed according to the plaintiff's counsel in that case. The rights of Part C insurers to be reimbursed should simply not be included as any part of the discussion on whether there should be form discovery to allow insurers to comply with their reporting obligations to traditional Medicare. The reporting obligations contained in 42 U.S.C. §1395y(b)(8) and the related regulations require reporting, in particular form, to the federal government. Those requirements do not extend to private health insurers contracting with Medicare participants to provide alternate insurance plans. Anyone enrolled in Medicare Part C is required first to obtain a Medicare number by registering with traditional Medicare and only then can that person opt to purchase a Part C plan. This discovery along the lines proposed by CDLA extends far beyond this proposed rule change and CTIA would request the opportunity to comment further if anything related to disclosures to the private, Part C insurers or other expansions suggested by CDLA are being considered by the Committee.

Thank you again for allowing us to participate in this process. Please feel free to contact me should you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Lincoln Woodard".

D. Lincoln Woodard

DLW:cmm