

Proposal by Judge Bright to include Medicare questions in standard discovery. (These questions were removed from the Form 202 recommendations of Rules Committee on May 15, 2017 prior to Judges' Annual Meeting in June 2017.) On May 15, 2017 based on comments received from Judge Stevens, the Rules Committee referred matter and Judge Stevens's comments to Civil Commission for its consideration. Judge Stevens' proposed new rule and suggested separate form agreed to as solution.

ORIGINAL PROPOSAL 2017

PB FORM 202- MEDICARE INTERROGATORIES

~~April 25, 2017~~

~~CONNECTICUT LAW JOURNAL~~

~~Page 77PB~~

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

(a) If the response to the previous interrogatory is affirmative, provide:

(i) The effective date(s):

(ii) Your Medicare claim number(s):

(iii) Your name exactly as it appears on your Medicare card; and

(iv) Your date of birth.

(b) State 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.

(c) If the response to the previous interrogatory is affirmative, state the amount Medicare Part A or Part B has paid.

(d) If you are not presently enrolled in Medicare Part A or Part B, state whether you are eligible to enroll in Medicare Part A or Part B.

(e) State whether you plan to apply for Medicare Part A or Part B within the next thirty-six (36) months.

DEFENDANT,

BY \_\_\_\_\_

I, \_\_\_\_\_, hereby certify that I have reviewed the above interrogatories and responses thereto and that they are true and accurate to the best of my knowledge and belief.

\_\_\_\_\_  
(Plaintiff)

Subscribed and sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public/  
Commissioner of the Superior  
Court

### **CERTIFICATION**

I certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically on (date) \_\_\_\_\_ to all attorneys and self-represented parties of record [and to all parties who have not appeared in this matter] and that written consent for electronic delivery was received from all attorneys and self-represented parties of record who received or will immediately be receiving electronic delivery.

Name and address of each party and attorney that copy was or will immediately be mailed or delivered to\*

\*If necessary, attach additional sheet or sheets with the name and address which the copy was or will immediately be mailed or delivered to.

\_\_\_\_\_  
Signed (Signature of filer)      Print or type name of person signing

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Mailing address (Number, street, town, state and zip code) or

\_\_\_\_\_  
E-mail address, if applicable

\_\_\_\_\_  
Telephone number

COMMENTARY: The changes to this form add a single, six-part question regarding Medicare to the existing standard interrogatories and are intended to allow defendant providers of liability insurance, including self-insurance, no fault insurance and worker's compensation insurance, to capture the information necessary to satisfy the federal reporting requirements on the Medicare enrollment status of claimants. In the absence of that question, defendants seek permission to file nonstandard interrogatories to obtain the required Medicare reporting information.

The changes also conform the language of Interrogatory #32 regarding recordings of an incident by film, photograph, videotape, audiotape or any other digital or electronic means to similar questions in other standard interrogatories in order to avoid any confusion, and make the certification consistent with Section 10-14.

Minutes of the Meeting  
Rules Committee  
May 15, 2017

\* See minute #8.

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On Monday, May 15, 2017, at 10:00 a.m. the Rules Committee conducted a public hearing in the Supreme Court courtroom to receive comments concerning proposed revisions to the Practice Book and, pursuant to subsection (c) of Section 51-14 of the Connecticut General Statutes, to receive comments on any proposed new rule or change in an existing rule that any member of the public deemed desirable. At the conclusion of the public hearing, the Committee met in the Supreme Court courtroom from 10:14 a.m. to 10:24 a.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR  
HON. WILLIAM H. BRIGHT, JR.  
HON. KEVIN G. DUBAY  
HON. ROBERT L. GENUARIO  
HON. SHEILA A. OZALIS  
HON. DAVID M. SHERIDAN  
HON. MARY E. SOMMER

Also in attendance were Joseph J. Del Ciampo, Counsel to the Rules Committee, and Attorneys Denise K. Poncini and Lori A. Petruzzelli of the Judicial Branch's Legal Services Unit. Judge Jon M. Alander and Judge Roland D. Fasano were not in attendance.

1. The Committee unanimously approved the minutes of the meeting held on March 27, 2017. Judge David M. Sheridan abstained from this vote.

2. The Committee noted the statement submitted by Judge Bozzuto that the Connecticut Bar Association (CBA) has withdrawn any opposition it had to the proposed

revisions to Section 25-60.

3. The Committee noted the combined comments received from Greater Hartford Legal Aid, Connecticut Legal Services and New Haven Legal Assistance Association, Inc. in favor of the proposed revisions to Sections 2-70, 2-73 and 2-77.

4. The Committee considered comments from Ms. Maureen M. Martowska concerning the proposed revisions to Section 25-60.

After discussion, the Committee decided to table to its September meeting consideration of Ms. Martowska's comments and to refer those comments to Judge Bozzuto for her consideration and comment.

5. The Committee considered comments from Mr. Hector Morera concerning the proposed revisions to Section 25-60 and concerning other additional proposed new Practice Book rules.

After discussion, the Committee unanimously voted to further amend Section 25-60 as set forth in Appendix A attached to these minutes. Additionally, the Committee decided to table to its September meeting consideration of the new Practice Book rules proposed by Mr. Morera and to refer those proposals to Judge Bozzuto for her consideration and comment.

6. The Committee considered the testimony and written submission of Mr. Daniel M. Lynch concerning compliance with the ADA, the availability of an audio record of proceedings, and notice regarding attorney resignation.

After discussion, the Committee decided to place those matters on its September agenda.

7. The Committee considered a matter raised by Counsel regarding the


inconsistency in terminology used in the forms that were the subject of the public hearing regarding uninsured/underinsured motorist coverage.

The Committee unanimously voted to use the phrase "uninsured/underinsured" as standard terminology in the relevant Practice Book Forms, where appropriate, as set forth in Appendix B attached to these minutes.

✓ 8. Judge Bright discussed comments received from Judge Stevens concerning the proposed amendments to Form 202 regarding Medicare coverage.

After discussion, the Committee unanimously voted to remove Interrogatory #39 from the proposed revisions to Form 202 as set forth in Appendix C attached to these minutes and to refer the proposal regarding Medicare Interrogatories to the Civil Commission for further review and for any relevant rules changes.

Respectfully submitted,

  
Joseph J. Del Ciampo  
Counsel to the Rules Committee

Attachments

~~(39) State whether you have ever been enrolled in Medicare Part A or Part B.~~

~~(a) If the response to the previous interrogatory is affirmative, provide:~~

~~(i) The effective date(s);~~

~~(ii) Your Medicare claim number(s);~~

~~(iii) Your name exactly as it appears on your Medicare card; and~~

~~(iv) Your date of birth.~~

~~(b) State 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.~~

~~(c) If the response to the previous interrogatory is affirmative, state the amount Medicare Part A or Part B has paid.~~

~~(d) If you are not presently enrolled in Medicare Part A or Part B, state whether you are eligible to enroll in Medicare Part A or Part B.~~

~~(e) State whether you plan to apply for Medicare Part A or Part B within the next thirty-six (36) months.~~

DEFENDANT,

BY \_\_\_\_\_



I, \_\_\_\_\_, hereby certify that I have reviewed the above interrogatories and responses thereto and that they are true and accurate to the best of my knowledge and belief.

\_\_\_\_\_  
(Plaintiff)

Subscribed and sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public/  
Commissioner of the Superior  
Court

#### CERTIFICATION

I certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically on (date) \_\_\_\_\_ to all attorneys and self-represented parties of record [and to all parties who have not appeared in this matter] and that written consent for electronic delivery was received from all attorneys and self-represented parties of record who received or will immediately be receiving electronic delivery.

Name and address of each party and attorney that copy was or will immediately be mailed or delivered to\*

\*If necessary, attach additional sheet or sheets with the name and address which the copy was or will immediately be mailed or delivered to.

\_\_\_\_\_  
Signed (Signature of filer)      Print or type name of person signing

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Mailing address (Number, street, town, state and zip code) or

\_\_\_\_\_  
E-mail address, if applicable

\_\_\_\_\_  
Telephone number

COMMENTARY: The changes to this form conform the language of Interrogatory #32 regarding recordings of an incident by film, photograph, videotape, audiotape or any other digital or electronic means to similar questions in other standard interrogatories in order to avoid any confusion, and make the certification consistent with Section 10-14.

*(Deleted language is shown by strikethroughs)*

\* 2018  
New proposal

**Del Ciampo, Joseph**

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**From:** Stevens, Barry  
**Sent:** Thursday, July 26, 2018 1:15 PM  
**To:** Del Ciampo, Joseph  
**Cc:** Stevens, Barry  
**Subject:** FW: Proposed Amendment to Form 202 Regarding Medicare Coverage

I indicated when we last talked that I would send you this correspondence regarding amending the rules to address medicare coverage.. I apologize for the delay. I believe the last communications are self-explanatory, and the last draft below should be re-written to delete the words "defendant" and "by the defendant" as indicated. Call me as necessary. Thanks.

**From:** Stevens, Barry  
**Sent:** Thursday, May 25, 2017 10:09 AM  
**To:** Bright, William <William.Bright@jud.ct.gov>; Wilson, Robin <Robin.Wilson@jud.ct.gov>  
**Subject:** RE: Proposed Amendment to Form 202 Regarding Medicare Coverage

You are very welcome; happy to assist.

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**From:** Bright, William  
**Sent:** Thursday, May 25, 2017 8:49 AM  
**To:** Stevens, Barry; Wilson, Robin  
**Subject:** RE: Proposed Amendment to Form 202 Regarding Medicare Coverage

Thanks Barry. I think those changes make sense. Bill

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**From:** Stevens, Barry  
**Sent:** Wednesday, May 24, 2017 3:32 PM  
**To:** Bright, William; Wilson, Robin  
**Subject:** RE: Proposed Amendment to Form 202 Regarding Medicare Coverage

Sec. 13-12A. (NEW) Disclosure of Medicare Enrollment, Eligibility and Payments Received  
In any civil action involving allegations of personal injury, information on the claimant's Medicare enrollment status, eligibility or payments received, which is sufficient to allow [defendant] providers of liability insurance (including self-insurance), no fault insurance and/or worker's compensation insurance to comply with the federally-mandated reporting requirements imposed under 42 USC §1395y (b)(8), shall be subject to discovery by any party by interrogatory as provided in under Sections 13-6 through 13-8. The interrogatories shall be limited to those set forth in Form  
217 222. Information disclosed pursuant to this rule is not by reason of disclosure admissible in evidence at trial. Such information shall be used [by the defendant] only for purposes of complying with 42 USC §1395y (b)(8) and shall not be used or disclosed for any other purpose.

Bill, as to the above proposed rule, my comments are as follows:

I recommend that the word "defendant" as highlighted above be deleted. It is confusing because it suggests that the information is being used by a "defendant provider" or the disclosure is limited when a provider is a "defendant", when neither is the case. In most cases, the information will be used by the defendant's insurer who is not a party to the case.

For similar reasons, I suggest that the words "by the defendant" highlighted above be deleted because in most cases the defendant is not the insurer and the defendant is only going to supply this information to his/her insurer. This defendant will not use the information for any other purpose except to pass the information along, and the insurer will actually be using it to comply with Sec.1395y. Thus the highlighted, limiting language should be omitted so that a blanket prohibition is stated.

I hope the above is helpful.

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**From:** Bright, William  
**Sent:** Wednesday, May 24, 2017 10:53 AM  
**To:** Stevens, Barry; Wilson, Robin  
**Subject:** FW: Proposed Amendment to Form 202 Regarding Medicare Coverage

Barry and Robin,

I wanted to thank you both again for your thoughts on the Medicare questions. At our most recent Rules Committee meeting I asked that the proposed new language to the standard interrogatories be pulled. Instead, we will propose the attached new Rule 13-12A and a separate Medicare Interrogatory form that can be used in any type of case. I'd welcome your thoughts on both. Bill

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**From:** Mastrony, Alice  
**Sent:** Wednesday, May 17, 2017 3:03 PM  
**To:** Bright, William; Palmer, Roberta  
**Subject:** RE: Proposed Amendment to Form 202 Regarding Medicare Coverage

Good afternoon.

Attached is an attempt on my part to draft a rule on this. See what you think. I tried to address Judge Stevens' concerns in the text of the rule.

Also attached is a small amendment to 13-6 – 13-8 to reference the new standard interrogatories and a new form (222) on Medicare interrogatories. (Presumably, we will also be creating a new form 220 that just contains the Medicare questions.) The question is will that be in addition to the ones we have already proposed adding to the existing standard interrogatories, which have just finished the public hearing on this past Monday? Based upon J. Stevens' email, he thinks they should not be automatically in the standard interrogatories for premises liability/MV cases. I am just not sure how to address that with the Rules Committee at this point.

Finally, I have a new form # 220 that is just the Medicare questions. If for nothing else, it will work for the "claims where personal injury is alleged."

Let me know what you think. I was going to circulate these to the discovery subcommittee, which is meeting on Monday, May 22<sup>nd</sup> via conference call.

Finally, I heard from John Kennedy, and they will probably not be ready to share a final product with the Commission on Monday, although he said they are very close. I will be talking to Angelo this afternoon, and I may know more then.

Thank you – all comments gratefully received!  
Alice

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**From:** Bright, William  
**Sent:** Friday, May 12, 2017 8:04 AM  
**To:** Mastrony, Alice; Palmer, Roberta  
**Subject:** RE: Proposed Amendment to Form 202 Regarding Medicare Coverage

Alice,

That would be great. Thanks.

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**From:** Mastrony, Alice  
**Sent:** Friday, May 12, 2017 5:38 AM  
**To:** Bright, William; Palmer, Roberta  
**Subject:** RE: Proposed Amendment to Form 202 Regarding Medicare Coverage

Shall I draft something and run it by the discovery subcommittee?

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**From:** Bright, William  
**Sent:** Thursday, May 11, 2017 4:50 PM  
**To:** Mastrony, Alice; Palmer, Roberta  
**Subject:** FW: Proposed Amendment to Form 202 Regarding Medicare Coverage

Alice and Roberta, I think Judge Stevens makes some very good points. I am inclined to recommend his alternate approach to the Rules Committee. What do you think?

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**From:** Stevens, Barry  
**Sent:** Thursday, May 11, 2017 3:14 PM  
**To:** [Dennis.eveleigh@connapp.jud.ct.gov](mailto:Dennis.eveleigh@connapp.jud.ct.gov); Alander, Jon; Bright, William; Dubay, Kevin; Fasano, Roland; Genuario, Robert; Ozalis, Sheila; Sommer, Mary  
**Cc:** Stevens, Barry  
**Subject:** Proposed Amendment to Form 202 Regarding Medicare Coverage

To: Members of the Rules Committee  
From: Judge Barry Stevens  
Date: May 11, 2017

Re: PROPOSED AMENDMENT TO FORM 202

I recently wrote a decision on a defendant's motion for supplemental discovery seeking Medicare identification information from the plaintiff and was made aware of the proposed rule on this issue. This

proposal recommends a modification of Form 22 of the standard discovery for interrogatories in motor vehicle and premises liability cases. Practice Book § 13-6 (b). I have concerns about the proposed rule and make the following recommendations to address them.

1. The Medicare interrogatory should be available to a defendant pursuant to a stand-alone rule similar to Practice Book § 13-12 (authorizing the disclosure of information about liability insurance policies.) The proposed rule should not be limited to Form 22.

I make this suggestion for two reasons. First, the proposed rule is being advanced to address the provision under the Medicare Act (42 U.S.C. § 1395y(b)(8)) requiring insurance companies to report a plaintiff's potential eligibility for Medicare benefits. Standard Form 22 is only used in motor vehicle and premises liability cases, but this Medicare reporting requirement may be implicated in other cases where the defendants have medical insurance, for example, in cases such as dog bite cases, medical malpractice cases, and underinsured/uninsured motorist cases. Second, defendants' insurers do not uniformly seek this Medicare information in all cases involving personal injuries (possibly because of a more narrow view that the reporting requirements may not be implicated when the plaintiff's recovery is unevaluated, contested, or unlikely.) Authorizing a defendant to acquire the Medicare information through an interrogatory authorized by a separate practice book rule, rather than mandating this disclosure in the limited cases as proposed, appears more desirable.

2. The proposed rule should include a protective provision limiting the use and dissemination of this personal identification information.

The rule as proposed *requires* an individual to produce his or her Medicare claim number and date of birth in all motor vehicle and premises liability cases for use by third-party insurers without any protective provisions limiting the disclosure or dissemination of this information. This is a very serious concern that has been addressed in the Practice Book Rules in a different context. Practice Book § 4-7 ("Personal Identifying Information to be Omitted or Redacted from Court Records in Civil and Family Matters.") For example, the rule could provide that the information disclosed in answer to the interrogatory shall only be used by the defendant's insurer to comply with § 1395y(b)(8), and shall not be further used or disclosed for any other reason.

3. Lastly, similar to the provision presently existing in Practice Book § 13-12, the proposed rule should state that the information concerning Medicare coverage "is not by reason of disclosure admissible in evidence at trial."

The obvious reason for this suggestion is to expressly state that the disclosure of the information does not reflect a decision or view that the disclosed information is thereby admissible at the trial.

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Hon. Barry Stevens  
Judge, Superior Court  
Connecticut Judicial Branch  
E-mail: [Barry.Stevens@jud.ct.gov](mailto:Barry.Stevens@jud.ct.gov)  
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