

# Medicare and Workers' Compensation

NASI Symposium

October 12-13, 2006

Washington, D.C.

Edward M. Welch

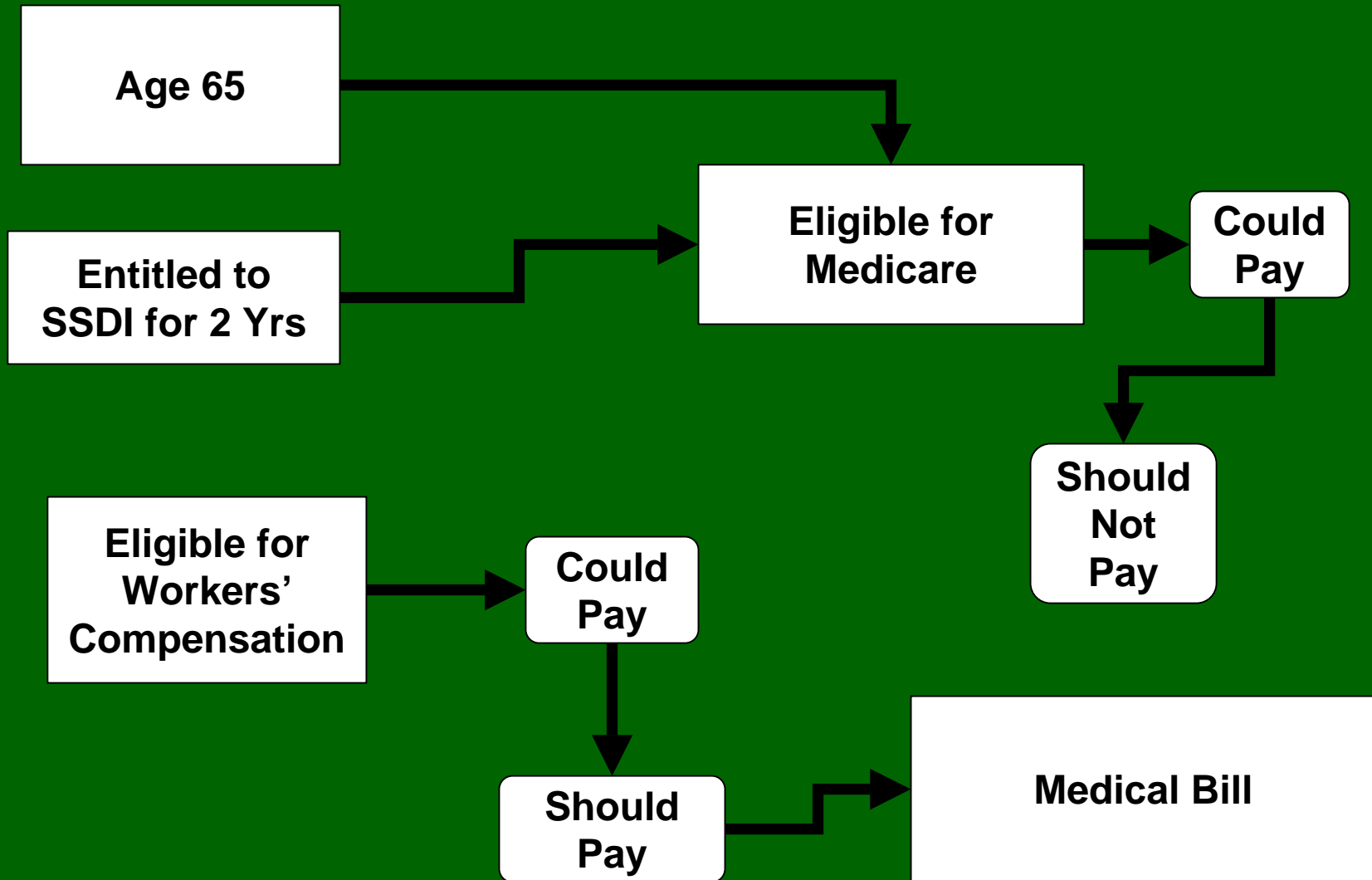
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[www.lir.msu.edu/wcc](http://www.lir.msu.edu/wcc)

# Workers' Compensation and Medicare



# Sins of the Past 1

**Medical Bill**

**A** 

**B** **C** **D**

**STATEMENT OF ACCOUNT**

Statement # **ST2052660482CO** ACCOUNT # **123-45-6789**

**D** **ADDRESSEE:**  
John Doe  
1234 Main Street  
Pella, Iowa 50219

Pella Medical Clinic  
400 Main St  
Pella, IA 50219-1234

Statement of: **Jane Doe**  
Department Number: **123-45-6789**  
Plan: **Medicare**

DATE	DESCRIPTION	AMOUNT	PAID	BALANCE
9/20/2005	PHYSICIAN	24.00		24.00
	LABORATORY	12.00		36.00
	RADIATION	12.00		48.00
	PHYSICIAN	24.00		72.00
	LABORATORY	12.00		84.00
	RADIATION	12.00		96.00
	PHYSICIAN	24.00		120.00
	LABORATORY	12.00		132.00
	RADIATION	12.00		144.00
	PHYSICIAN	24.00		168.00
	LABORATORY	12.00		180.00
	RADIATION	12.00		192.00
	PHYSICIAN	24.00		216.00
	LABORATORY	12.00		228.00
	RADIATION	12.00		240.00
	PHYSICIAN	24.00		264.00
	LABORATORY	12.00		276.00
	RADIATION	12.00		288.00
	PHYSICIAN	24.00		312.00
	LABORATORY	12.00		324.00
	RADIATION	12.00		336.00
	PHYSICIAN	24.00		360.00
	LABORATORY	12.00		372.00
	RADIATION	12.00		384.00
	PHYSICIAN	24.00		408.00
	LABORATORY	12.00		420.00
	RADIATION	12.00		432.00
	PHYSICIAN	24.00		456.00
	LABORATORY	12.00		468.00
	RADIATION	12.00		480.00
	PHYSICIAN	24.00		504.00
	LABORATORY	12.00		516.00
	RADIATION	12.00		528.00
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	LABORATORY	12.00		564.00
	RADIATION	12.00		576.00
	PHYSICIAN	24.00		600.00
	LABORATORY	12.00		612.00
	RADIATION	12.00		624.00
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	RADIATION	12.00		960.00
	PHYSICIAN	24.00		984.00
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	RADIATION	12.00		1008.00
	PHYSICIAN	24.00		1032.00
	LABORATORY	12.00		1044.00
	RADIATION	12.00		1056.00
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	LABORATORY	12.00		1092.00
	RADIATION	12.00		1104.00
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# Sins of the Past 2

## Workers' Compensation Settlement

How will I pay  
my medical  
bills?



Just put them  
on Medicare.



We Cannot Do This Anymore!

# Centers for Medicare and Medicaid Services (CMS)

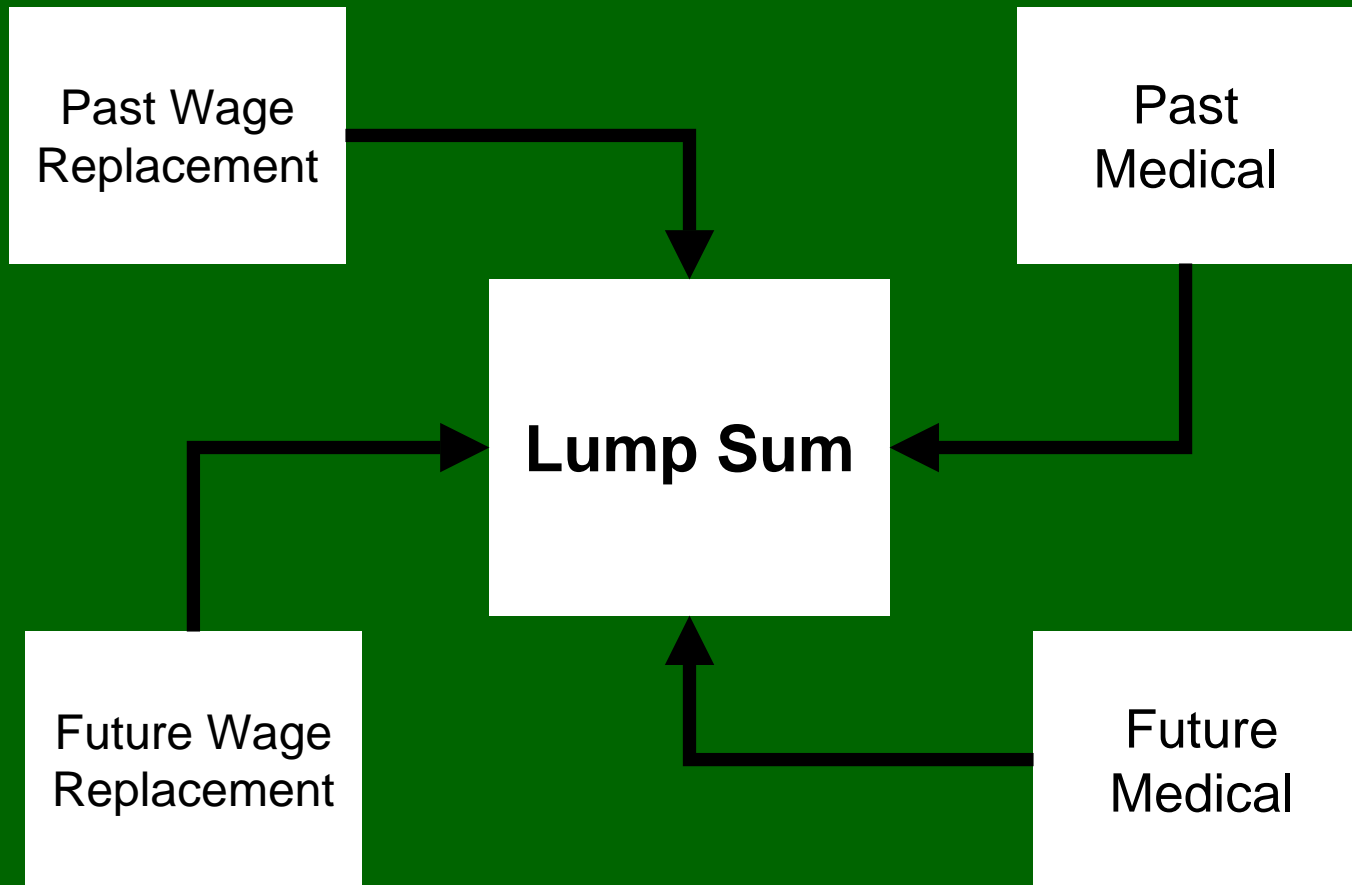
- What happened to the second “M”?
- Manages Medicare
- Since 2001, strictly enforced its rights under the Medicare as Secondary Payer Act

Some things are very clear.

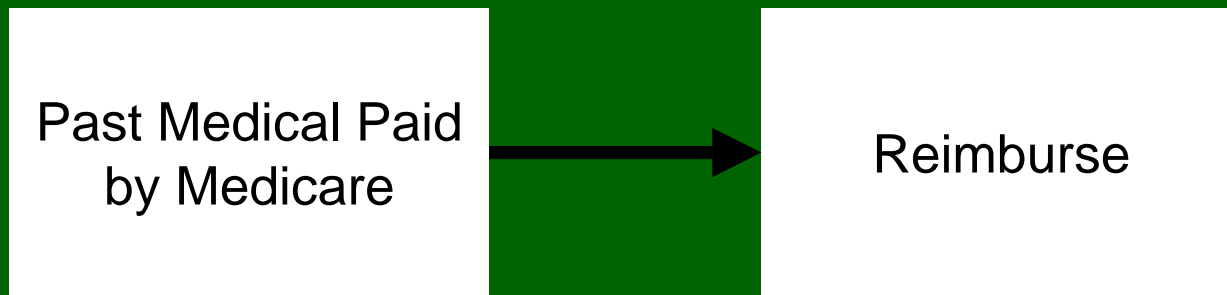




# Workers' Compensation Settlement



# Settlement – Past Medical “Conditional Payments”



# *Manning v Utilities Mut Ins Co*, No 98 Civ 4790 (RCC), 2004 us Dist LEXIS 1674

- Workers' compensation could have paid about \$200,000 in medical bills
- Workers' compensation did not pay
- Medicare paid
- Worker sued insurance carrier
- Insurance carrier ordered to pay **double damages**

# Future Medical

## A Simple Theory



The Implementation Has Been  
a Problem

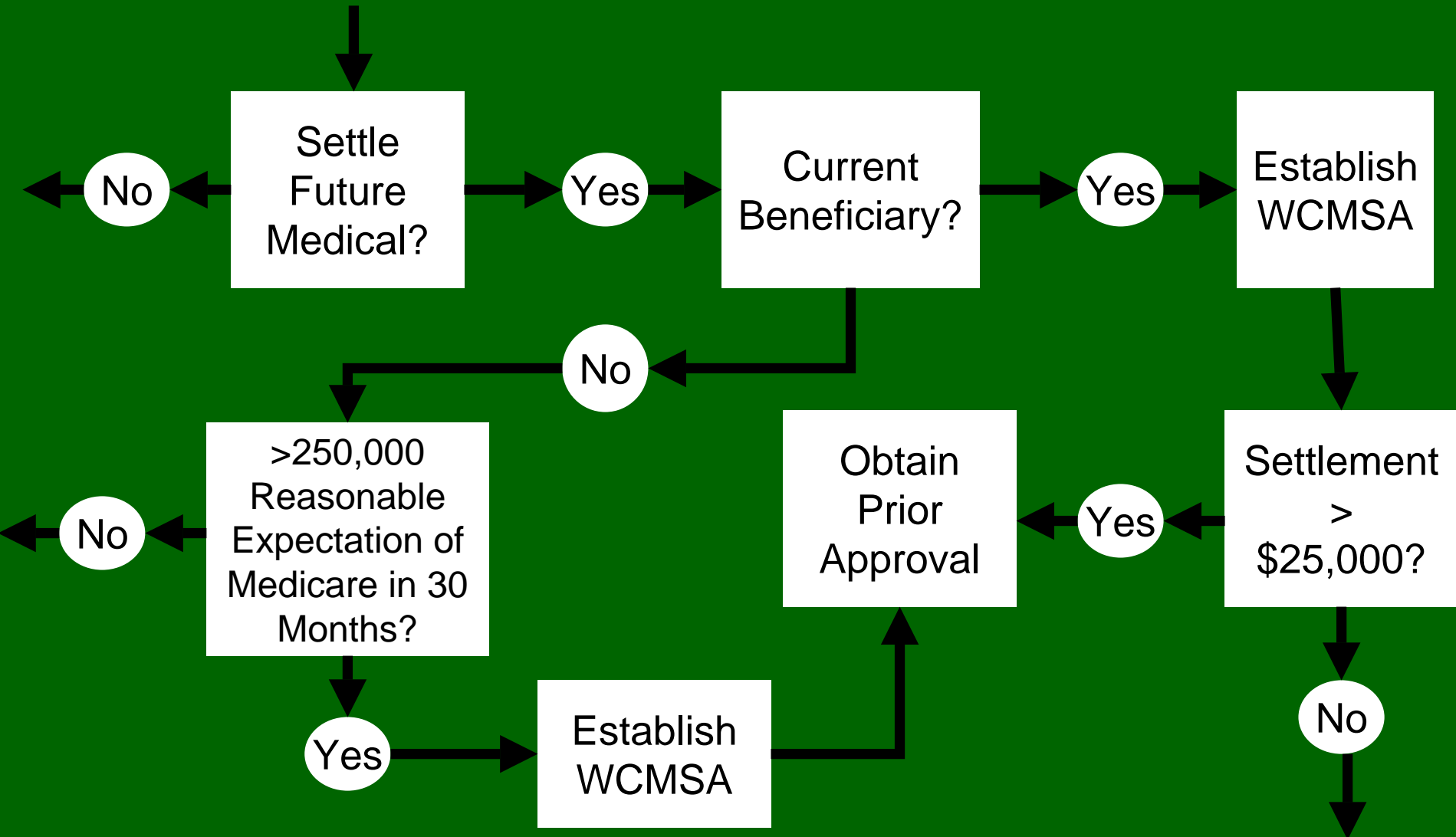
CMS:

The money for future benefits should be placed in a Workers' Compensation Medicare Set-aside Agreement (WCMSA)

# The Problem

Medicare wants to pre-approve settlements in certain cases

# Which Cases?





# Practical problems

- Delay
- Lack of understanding of workers' compensation laws
- Failure to recognize differences among state workers' compensation systems
- Unrealistic accounting expectations
- Cost vs. benefits
- No appeal

Over 900 Michigan Cases  
“On Hold”

# New Procedures and Contractor

- **NEW MEDICARE RECOVERY PROCEDURE – Medicare Secondary Payer**  
The Centers for Medicare & Medicaid Services (CMS) is consolidating all of the functions and workloads related to Medicare Secondary Payer (MSP) post-payment recoveries into one MSP recovery contract. The contract for the new national MSP Recovery Contractor (MSPRC) will be implemented on October 2, 2006.
- The MSPRC will take over new MSP recovery claims and most existing claims. However, some existing MSP recovery claims will remain the responsibility of the claims processing contractors. The following sections will help you determine how the change to a national MSPRC will affect you.

# New Procedures and Contractor

- Overview

[http://www.cms.hhs.gov/MSPRGenInfo/01\\_Overview.asp#TopOfPage](http://www.cms.hhs.gov/MSPRGenInfo/01_Overview.asp#TopOfPage)

- Contacting MSPRG

[http://www.cms.hhs.gov/MSPRGenInfo/02\\_contactMSPRC.asp#TopOfPage](http://www.cms.hhs.gov/MSPRGenInfo/02_contactMSPRC.asp#TopOfPage)

- MSPRG Rules

[http://www.cms.hhs.gov/MSPRGenInfo/03\\_msprrules.asp#TopOfPage](http://www.cms.hhs.gov/MSPRGenInfo/03_msprrules.asp#TopOfPage)

# Different Views

- Some people report that they are able to make the system work
- Others report terrible problems
- “If I could just get them to return my phone calls.”

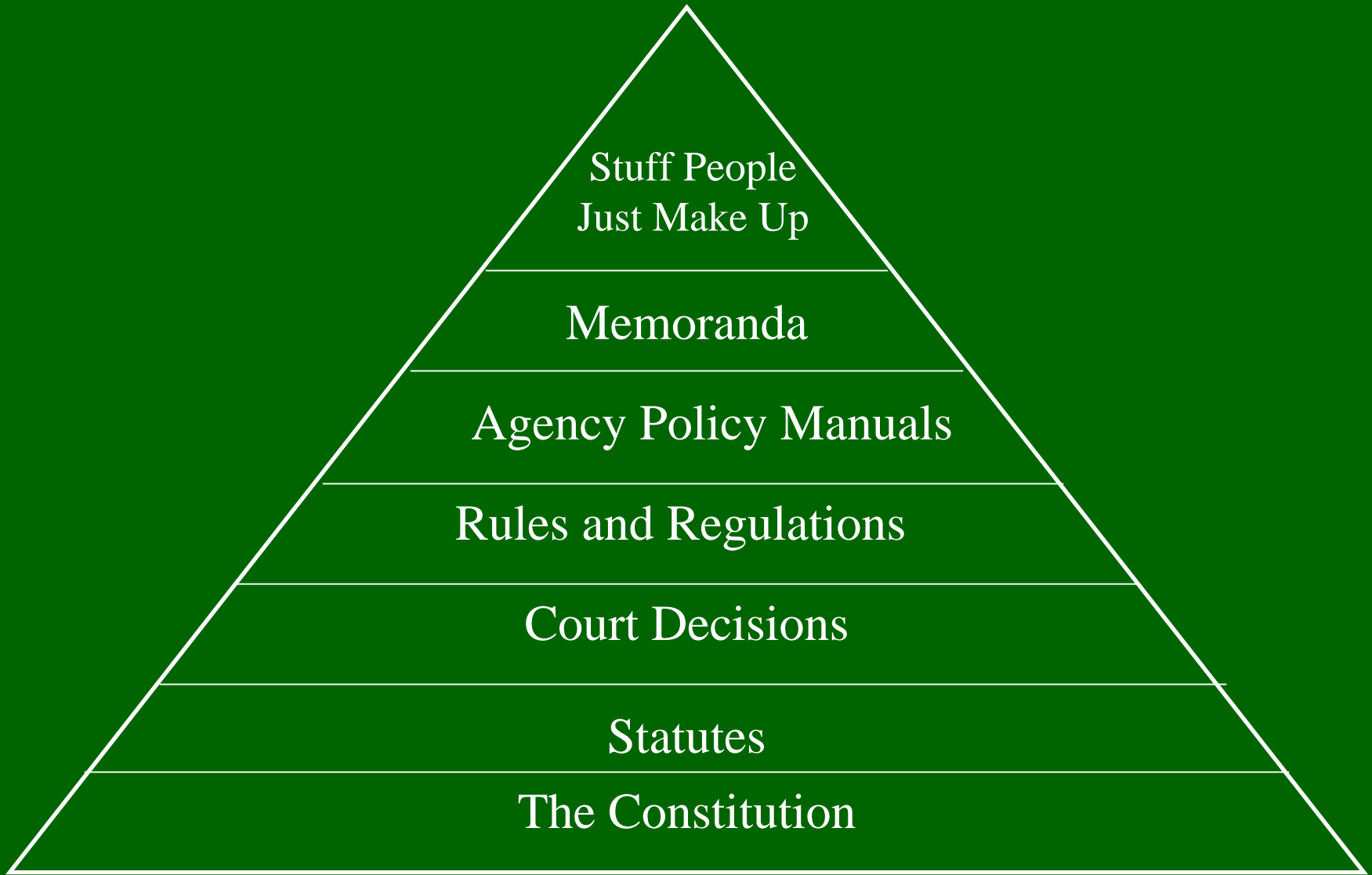
# The Role of Vendors

- Identify conditional payments
- Prepare a life care plan
- Calculate the appropriate amount of the set-aside
- Obtain approval from CMS
- Administer the set-aside
- Stir up the pot

# There are Legal Problems with the Position of CMS

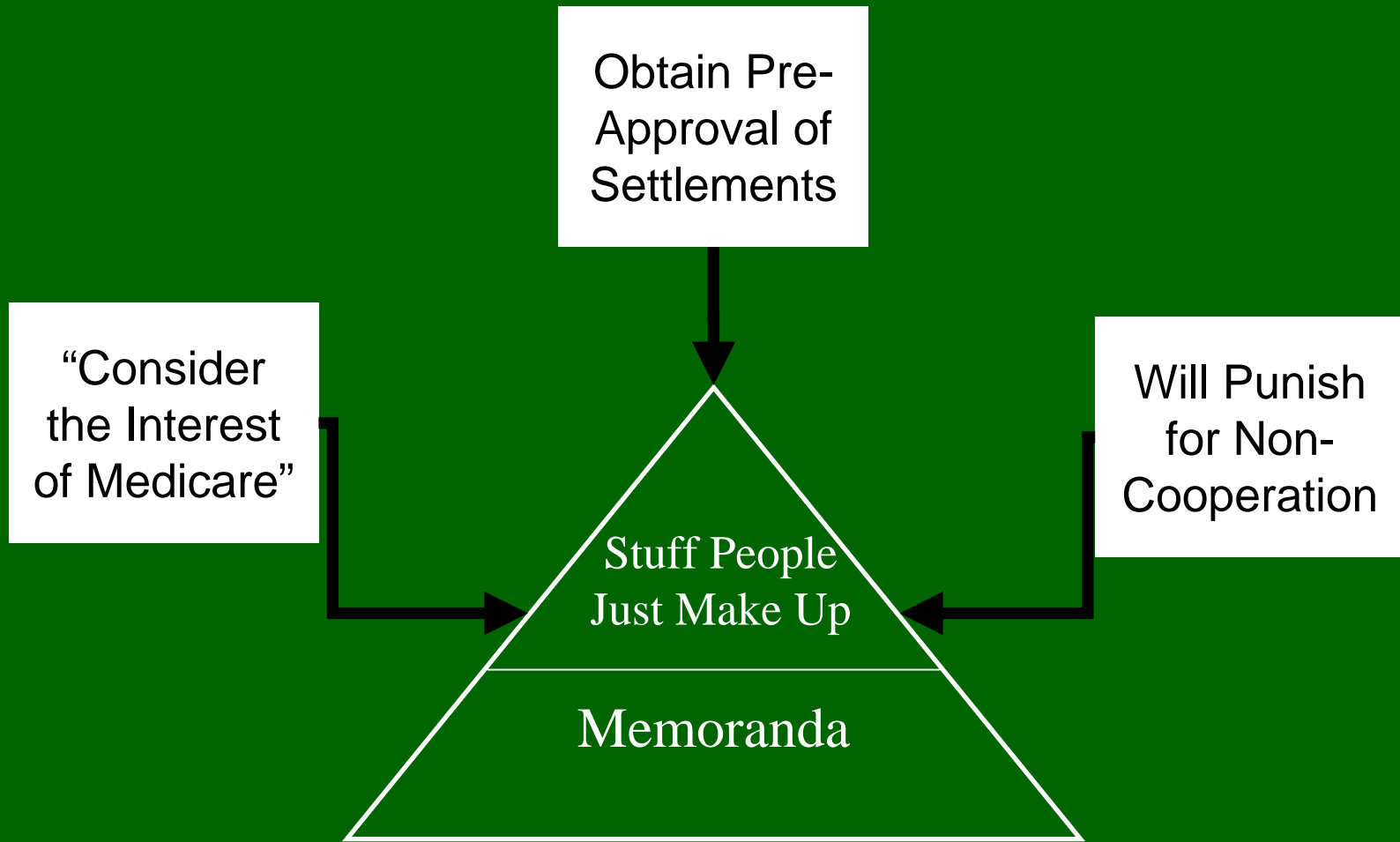
- We will look at a couple issues

# Law 101





# The Basis of CMS's Position



# CMS Says

- It “recommends” pre-approval
- It agrees to review certain cases
- It will **punish** people that do not cooperate

# If You Do Not Obtain Pre-Approval

- CMS will treat the entire settlement as if it were for future medical

*Ark. HHS v Ahlborn*, 126 S. Ct. 1752; 164 L. Ed. 2d 459; 2006 U.S. LEXIS 3455 (2006)

- CMS tried to do the same thing in Medicaid
- The U.S. Supreme Court ruled they could not

# Legislation

- Exempt settlements where it does not make sense to establish a set-aside
- Use a single \$250,000 threshold for future and current Medicare beneficiaries
- Clarify how to calculate the \$250,000
- Provide for Medicare to share the costs of reviewing a set-aside proposal as well as set-aside administration
- The amount of the primary payment obligation is established by the applicable WC law
- Provide safe harbors in establishing set-asides
- Permit the parties to pay a set-aside directly to Medicare
- Provide reasonable deadlines for Medicare to (i) notify the parties of any conditional Medicare payments and (ii) complete its review of a set-aside proposal
- Establish an appeal process
- Grandfather in prior settlement agreements

# Legislative Action

The lead organization in supporting the bill is UWC—Strategic Services on Unemployment and Workers' Compensation (UWC) (<http://www.uwcstrategy.org>). Their president is Eric Oxfeld. They can be reached at [info@UWCstrategy.org](mailto:info@UWCstrategy.org).

# A Solution?

- We don't want to cheat Medicare
- But we do want a workable approach