



CMA Press Release – May 24, 2005

NATIONWIDE CLASS ACTION ATTACKS LACK OF NOTICE IN MEDICARE CASES

Contact: Gill Deford
(860) 456-7790
gdeford@medicareadvocacy.org

On May 24, 2005, a Medicare beneficiary and his representatives filed a lawsuit in federal district court in Hartford, Connecticut challenging a new regulation that deprives beneficiaries of their right to notice. The regulation, which took effect on May 1 of this year, reverses the prior rule under which a copy of the “Initial Determination” - the first step in the process that allows Medicare beneficiaries to dispute denials of coverage - was sent to the beneficiary’s appointed representative. Since Medicare recipients are elderly or disabled, and many are sick or do not understand the notices sent by the government, the representative is often the only individual who can comprehend the notice and ensure that a request for review is timely filed.

“This is one of those issues that has almost no sex appeal but that has a terrible impact on people trying to navigate the maze of the Medicare system,” said Gill Deford, an attorney with the Center for Medicare Advocacy in Connecticut who represents the plaintiffs. “If beneficiaries don’t know their claim has been denied,” he added, “they can’t protect their rights. Sending a copy of the notice to the representative is the only way to guarantee that they don’t lose their right to review.”

In 2002 a federal judge held that a class of Connecticut Medicare beneficiaries were entitled under the then-existing regulations and under the Due Process Clause to have a copy of the notice sent to their representatives. The new regulation explicitly repudiates that right. The new case, *Lirot v. Leavitt*, contends that the new regulation was improperly promulgated and, again, that due process requires sending the notice to the representative. *Lirot* has been brought as a nationwide class action, so that its impact could be considerably broader than the previous case. “If plaintiffs win this one,” attorney Deford remarked, “the Secretary of Health and Human Services will be forced to return to the old policy throughout the country, which is the only sensible way to operate a system intended to help older people and people with disabilities.”