



State of New Jersey

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
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JON S. CORZINE
Governor

DAVID J. SOCOLOW
Commissioner

MEMORANDUM

April 6, 2009

To: All Judges and Attorneys

From: Peter J. Calderone, Director and Chief Judge 

Subject: Medicare Eligible Petitioners

As you may be aware, the Center for Medicare Services (CMS) will shortly require insurers and self-insured employers to report to CMS the names of Medicare eligible individuals involved in or claiming a work injury. While it has been our policy to inquire about Medicare status at an early stage of a case, the CMS expanded reporting procedures create added impetus for all parties to be aware of a petitioner's Medicare eligibility. Such reporting will provide CMS with additional information to enforce its requirements that all CMS conditional payment and when required set-aside reviews are completed.

It is our understanding that under CMS procedures the final Medicare approval is provided after a settlement or judgment is entered in the workers' compensation proceeding. The workers' compensation order must be signed by a judge and the parties for settlements and at least the judge for judgments. Unsigned orders are contrary to CMS requirements for a binding Medicare final approval and closure. Therefore, parties should not send unsigned settlements to CMS. Similarly, settlements signed by a judge which are not based on a transcribed court record would violate our law since judges must find a settled case resolution fair and just on the court record presented.

Up to date Medicare information must be obtained prior to the entry of a signed workers' compensation order that needs final CMS approval. When a case is settled, the parties can agree on language in the settlement that a party, usually the petitioner, will be responsible for any additional CMS reimbursements. The petitioner is generally identified since only the petitioner can petition CMS for a waiver from additional payments on hardship or equity grounds. We are advised that such waivers when supported are most often granted. As an alternative, the parties can agree in Orders Approving Settlements (but not Section 20 Orders) and the judge can insert language in judgments that the parties have the right to reopen the case if there are additional Medicare reimbursements and a dispute as to which party is responsible for the payment.

If the options in paragraph 3 above with respect to settlements are not agreed to by the judge and the parties, then the case has to be tried with a judicial resolution on the issues.

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