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Director & Chief Judge

MEMORANDUM

April 18, 2018

To: All Judges of Compensation, Members of the Bar and Court Staff
From: Russell Wojtenko, Jr., Director & Chief Judge of Compensation 
Subject: Medicare Conditional Payments

It is the position of the N.J. Division of Workers' Compensation that litigants fully comply with and adhere to the Centers for Medicare & Medicaid Services' (CMS) policies and procedures regarding its recovery of conditional payments, including the mandatory reporting requirements of Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007.

The Medicare Secondary Payer provisions, found at section 1862(b) of the Social Security Act, prohibits Medicare from making payment where payment has been made or can reasonably be expected to be made by a primary plan. If payment has not been made, or cannot reasonably be expected to be made promptly by a primary plan, Medicare may pay conditionally, with the expectation that the conditional payments would be reimbursed, once primary payment responsibility is demonstrated.

In workers' compensation situations, Medicare deems that a workers' compensation plan or insurer, including self-insurance, has demonstrated primary payment responsibility when a settlement, judgment, award, or other payment occurs (referred to as "settlement" by CMS). Accordingly, Medicare is obligated by statute to recover conditional payments it made for medical care related to that "settlement".

Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 added mandatory reporting requirements to Non-Group Health Plan Responsible Reporting Entities, including workers' compensation plans, insurers, and self-insureds, requiring them to provide CMS with workers' compensation claim information in connection with any "settlement" made to an injured Medicare beneficiary.

Section 111 reporting helps CMS determine when workers' compensation insurance is primary to Medicare and enables CMS to determine if it made any conditional payments related to that "settlement". Once reported, Medicare calculates its conditional payment amount, reduces that amount for attorney fees and costs, and issues a demand letter requiring reimbursement.

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Reporting is accomplished by either the submission of an electronic file of workers' compensation claim information, where the injured party is a Medicare beneficiary, or by entry of this claim information directly into a secure Web portal, depending on the volume of data to be submitted.

Medicare beneficiaries or their attorneys may also report their workers' compensation claim information to the Centers for Medicare & Medicaid Services Benefits Coordination & Recovery Center.

See <https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Mandatory-Insurer-Reporting-For-Non-Group-Health-Plans/Overview.html>

Before a N.J. Judge of Compensation can consider a proposed Order Approving Settlement or Order Approving Settlement under N.J.S.A. 34:15-20 (Section 20 settlement) involving a petitioner who is a Medicare beneficiary, the parties shall first report the required workers' compensation claim information to CMS as set forth by Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007. The parties shall also begin CMS' process of obtaining conditional payment information.

In accordance with the Division's memorandum of March 28, 2016, if conditional payments have been made, it is best left to the parties to decide how they will resolve their remaining Medicare issues. The parties are strongly encouraged to reach specific agreements delineating how their remaining Medicare issues will be resolved, thus protecting the injured Medicare beneficiaries, employers, and workers' compensation insurers, as well as honoring the rights and interests of Medicare. If an agreement is reached, it shall be placed on the record at the time of settlement and memorialized in the settlement Order. The petitioners' attorneys shall also inform their clients, on the record, of the Centers for Medicare & Medicaid Services' requirements and their compliance options.

Please note that if the parties settle by way of N.J.S.A. 34:15-20, the N.J. Division of Workers' Compensation shall not retain jurisdiction of any remaining CMS issues, as a Section 20 settlement has the effect of a dismissal with prejudice, being final as to all rights and benefits of the petitioner and is a complete and absolute surrender and release of all rights arising out of the specific workers' compensation claim petition.

For more information visit <https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Beneficiary-Services/Liability-No-Fault-and-Workers-Compensation-Reporting/Liability-No-Fault-and-Workers-Compensation-Reporting.html>

To contact the CMS Benefits Coordination & Recovery Center visit <https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Coordination-of-Benefits-and-Recovery-Overview/Contacts/Contacts-page.html>