



State of New Jersey

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MEMORANDUM

March 28, 2016

To: All Judges of Compensation and Attorneys

From: Hon. Russell Wojtenko, Jr. 
Director and Chief Judge of Compensation

Subject: Medicare – Insurer Non-Group Health Plans Recovery (Conditional Payments)

Many attorneys have contacted the N.J. Division of Workers' Compensation with concerns about the recent changes to Medicare's new Insurer Non-Group Health Plans Recovery program (Conditional Payments) and its impact on the timely resolution of workers' compensation cases. See Center for Medicare & Medicaid Services' website for a summary of the Insurer Non-Group Health Plans Recovery policy at <https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/InsurerServices/Insurer-NGHP-Recovery.html>

Before October 2015, petitioners' attorneys, as well as the workers' compensation carriers, were allowed to seek conditional payment information by reporting a claim, providing proof of representation and utilizing the Medicare portal. Conditional payments were coordinated through the Medicare's Benefit Coordination & Recovery Center.

As of October 5, 2015, Medicare created the Commercial Repayment Center (CRC) to assume responsibility for pursuing recovery of Medicare payments made in cases that should have been the responsibility of liability insurers, including self-insured entities, no-fault insurers, or workers' compensation entities, directly from the applicable plan.

Once Medicare learns from a carrier report or beneficiary report that a beneficiary has workers' compensation insurance, the CRC will identify claims that Medicare has made payments on that it believes should have been the responsibility of the workers' compensation carrier. The CRC will base this upon details about the type of incident, illness, or injury alleged. The search will include claims from the date of injury forward.

Rather than creating an itemization of payments and divulging it to the first party who requests it, the CRC will have direct contact with the workers' compensation carriers regarding obligations it believes they owe.

The CRC will then issue a Conditional Payment Notice (CPN) to the carrier. The notice will advise

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the carrier that certain actions must be taken within 30 days of the date on the notice or the CRC will automatically issue a demand for payment. The notice will list all of the claims and advise the carrier how to dispute items that are not related to the workers' compensation case. A courtesy copy will be sent to the beneficiary and their attorney. If a carrier has designated a specific recovery agent, they will also receive a copy of the notice.

The carrier has 30 days to challenge the claims in the CPN. The carrier may contact the CRC or use the portal to dispute the charges. Medicare will then issue a demand for payment to the carrier and request reimbursement within 60 days of receipt of the letter. If the CRC agrees that some items need to be removed, they are omitted from the demand letter.

The carrier then has 120 days from receipt of the demand letter to file an appeal. If no appeal is initiated, the carrier makes payment and the CRC will send a letter that the debt was resolved. However, new claims may be demanded if the carrier is obligated to provide ongoing medical.

Interest accrues from the date of the demand letter and if the debt is not resolved within 60 days, the interest is applied every 30 days. If the carrier fails to make payment, the matter is referred to the Department of Treasury for collection.

The exact nature of the process and the degree to which this new procedure excludes petitioners' attorneys from acting on their clients' behalf to resolve conditional payment issues is unknown at this point in time.

In light of the foregoing, it is the position of the N.J. Division of Workers' Compensation that the parties shall fully comply with the new policies and procedures of the Commercial Repayment Center.

While judges of compensation and the parties should continue to ensure that aforementioned process is being fully complied with, when it comes to the underlying workers' compensation case, it is best left to the parties to decide how they will resolve their remaining Medicare issues. The parties are free to, and are encouraged to, reach agreements that are suitable for their particular situation in order to resolve their workers' compensation case. Any agreements should be memorialized and placed on the workers' compensation record. Furthermore, the attorneys shall fully inform their clients of Medicare's requirements and their compliance options.

It must be noted that judges of compensation cannot compel petitioners and/or respondents to settle their workers' compensation cases. If a party is unable to settle the underlying workers' compensation claim due to an outstanding Medicare issue, or the parties are unable to enter into an agreement regarding their outstanding Medicare issues, the underlying workers' compensation case shall proceed to Trial in a timely fashion, in accordance with the Rules of the N.J. Division of Workers' Compensation.

Trials of workers' compensation cases will not be delayed due to outstanding Medicare issues.