When Medicare and Workers' Comp Intersect

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Ohio Bureau of Workers' Compensation

Ohio Safety Congress & Expo
March 27-29, 2012, Columbus, Ohio

OUTLINE

DISCLAIMERS

- Area of law is developing, especially in recovery of payments and settlements.
- Legislative proposals exist to change the system.
- CMS policy is identified in memos, and can change at any time (check for updates).
- BWC Policy is being re-evaluated as the law develops and new guidance is issued.

BACKGROUND: MEDICARE

- **Medicare Part A (Original Medicare)**
  - "Hospital insurance"
  - Coverage includes inpatient hospital care, skilled nursing care, hospice care, and other services (but not nursing home care, which is covered by part B).
  - Medicare provides coverage directly, and most beneficiaries pay no premium for Part A.
  - Part A is funded from the Federal Hospital Insurance Trust Fund.
- **Medicare Part B (Original Medicare)**
  - "Medical insurance"
  - Coverage includes doctors' fees, outpatient hospital visits, and other services/supplies not covered by Part A.
  - Medicare provides coverage directly for a monthly premium, but beneficiaries may opt out.
  - Part B is funded from the Federal Supplemental Medical Insurance Trust Fund.
- **Medicare Part C (Medicare Advantage)**
  - Part C covers all that A&B covers, <u>except</u> hospice care. (Hospice care is covered by original Medicare.)
  - A beneficiary must enroll in Parts A & B to be eligible to enroll in Part C.
  - Part C coverage is provided by private insurers approved by Medicare, and premiums and coverage levels vary by provider. Some Part C plans include prescription drugs.
  - Medicare Advantage plans have six basic structures.
    - Health Maintenance Organization (HMO)
    - Preferred Provider Organization (PPO)
    - Private Fee-for-Service (PFFS)
    - Special Needs Plan (SNP)
    - HMO-POS Plan
    - Medical Savings Account (MSA)

- **Medicare Part D (Prescription Drugs)**
  - Part D coverage is provided by private insurers approved by Medicare, and premiums and coverage levels vary by provider.
  - Beneficiaries must opt-in to Part D.
- **Medigap**
  - Medigap pays some of the copays and deductibles for Parts A & B.
  - Coverage is provided by private insurers approved by Medicare, and premiums and coverage levels vary by plan selected.
- **Extra Help**
  - Extra Help pays Part D premiums, deductible, and copays for low-income individuals.
  - Medicare provides coverage directly.

THE MEDICARE SECONDARY PAYER ACT (MSPA)

- **Generally**
  - 42 USC § 1395y(b) and 42 USC § 1862(b)(2)(A)(ii)
  - The MSPA is designed to ensure Medicare only pays for medical services that are not expected to be paid for by a primary payer.
  - Primary payers include insurance liability companies and workers' compensation insurers (including SI employers).
- **BWC's Responsibilities under the Medicare Secondary Payer Act**
  - Mandatory reporting of claims and settlements involving a Medicare-eligible injured workers (IWs)
  - Coordination of benefits for claims involving Medicare-eligible IWs
  - Settlement of claims involving Medicare-eligible or Medicare-probable IWs
- **Medicare-Eligible IWs ("Beneficiaries")**
  - Medicare beneficiaries:
    - are age 65+;
    - are Social Security Disability Benefits recipients; or
    - have had End Stage Renal Disease (ESRD) for more than 30 months.
- **"Medicare-Probable" IWs**
  - An IW has a "reasonable expectation" of Medicare within 60 months if he or she:
    - has applied for Social Security Disability Benefits;
    - has been denied Social Security Disability Benefits but anticipates appealing that decision;
    - is in the process of appealing and/or re-filing for Social Security Disability Benefits;
    - is older than 62 years and 6 months old (i.e., may be eligible for Medicare based upon his/her age within 30 months); or
    - has been diagnosed with ESRD, but does not yet qualify for Medicare.

RESPONSIBILITY #1: MANDATORY REPORTING

- **What does BWC Report?**
  - IW Name, contact information
  - Policy number
  - ICD-9 (diagnosis) and causation codes
  - IW representative, contact information
  - Ongoing responsibility for medical (ORM)
    - Settlement, expiration of statute of limitations, or death of IW terminates ORM

RESPONSIBILITY #2: COORDINATION OF BENEFITS

- **Denials of Service**
  - Denials of service should NOT be occurring for treatments unrelated to the WC allowed conditions. In speaking with MSPRC, confirm the ICD-9 codes for the WC injury MSPRC has on record are correct.
  - Record date and time of any calls to Medicare (specify which number was called), as well as the names of reps with whom you have spoken. If you are told the WC claim must be closed, request a supervisor.
  - If your call is unsuccessful, contact BWC, explain the situation, and request a letter of claim particulars. Please provide BWC with the details of calls you have made.
  - Provide the BWC letter to the provider and Medicare COB/MSPRC.

    Note: If the denial of service is pharmacy-related, provide the letter to the IW's pharmacy and ask the pharmacy to contact their Medicare clearing house with the information (the pharmacy's home office typically does this).
  - Follow-up with BWC if the letter is not sufficient.

- **Recovery of Payments**
  - Confirm which type of letter the IW has received and what action is required on MSPRC's website (see RESOURCES, p. 5 for website and instructions.)
  - Standard Correspondence Flow:
    - Rights & Responsibilities Letter
    - Conditional Payment Letter (CPL) or Notice (CPN)
    - Demand Letter
    - Notice of Intent to Refer to Treasury
    - Collection Demands
  - Conditional Payment Notices
    - **Check the addressee** to determine who the demand is against.
      - If the IW is cross-copied on the letter, the demand is NOT being made against the IW.
      - If BWC is not listed on as the addressee or cross-copied and the notice includes WC-related treatments, please forward notice to BWC.
    - **Check the diagnosis (ICD-9) codes**.
      - If the diagnosis codes are not related to WC, contact MSPRC to advise the items are not WC related.

RESPONSIBILITY #3: SETTLEMENT OF CLAIMS

- **MSPA Liability**
  - All parties to a settlement, including attorneys, must protect Medicare's interest in a settlement.
  - Any party can be held liable for double damages for failure to do so.
  - 42 C.F.R. § 411.24(g): CMS has a right of action to recover its payments from any entity, including a beneficiary, provider, supplier, physician, attorney, State agency or private insurer that has received a primary payment.

- **Ohio Supreme Court Ethics Opinion 2011-1** (February 2011)
  - It is improper for a claimant's attorney to agree to indemnify opposing party for MSP liability with respect to settlement.
  - It is improper for the opposing party's attorney to ask for it.

- **BWC Efforts to Protect Medicare's Interest**
  - Notice to the injured worker on the settlement request form (C-240)
  - Documented allocation of costs
  - Notice to the injured worker on the final settlement agreement (C-241)
  - BWC will sometimes require the IW to obtain a CPL prior to settlement or establish a Medicare set-aside trust ("MSA").
    - A CPL is required if the claim file reflects a significant drop in medical costs, the IW has recently obtained a HICN, and there is no obvious explanation for change in medicals.
      - The amount in the letter is not final. You must check with Medicare shortly before finalizing the settlement to confirm the amount of conditional payments associated with the claim.
      - Check the CPL's description of services to make sure the diagnosis codes match the IW's allowed conditions.
    - MSA is required for settlements over $25,000 (policy under review).
      - MSA can be self-administered or professionally administered. The administrator of the MSA must forward an annual accounting to Medicare that separately identifies expenditures for medical treatments and prescription drugs to Medicare.

- **Allocation of Settlement Dollars**
  - If dollars are not allocated, Medicare assumes full settlement is for future medical costs. Allocations must be made for future medical and future prescription drug treatments.
  - Medicare will not recognize an allocation of settlement dollars if "it appears to maximize indemnity payments to shift responsibility for payment of medical."
  - All dollars allocable to future medical and future prescription drug treatments must be spent before Medicare will pay for services related to the WC injury. Medicare looks to the aggregate amount allocated to determine whether dollars have been expended, not the specific allocation.

- **MSAs**
  - CMS suggests that any settlement involving future medical costs – including prescription costs – include a MSA (but, it is not required).
  - IW can only use the funds in the MSA for medical costs after the date of settlement, and must exhaust MSA funds before requesting repayment of medical expenses related to the WC injury from Medicare.

- **CMS Review of MSA Trust amounts**
  - Submission guidelines/format can be found on CMS's website.
  - Review thresholds:
    - The IW is Medicare-eligible and the total settlement amount is greater than $25,000, or;
    - The IW is Medicare-probable and the anticipated total settlement amount for future medical expenses (including prescriptions) and indemnity is expected to be greater than $250,000 over the duration of the settlement.
  - Time required for review varies and is not mandated by statute.
  - Meeting review thresholds does not guarantee CMS review.

RESOURCES

MEDICARE GUIDE:

Website: http://www.medicare.gov

- From the green tabs on top, select "Resource Locator."
- Then, from the blue bar on the left, select "Medicare & You Handbook."

CMS POLICY AND UPDATES:

Website: http://www.cms.gov/WorkersCompAgencyServices/

- Policy memoranda are scattered through the site. Most are at the bottom of the "Overview" and the "WCMSA – Related Topics" pages listed on the left side of the main WC page.
- Medicare is restructuring its website and the links may change. If the above link does not work, search "Workers Compensation" or "WCMSA" and one of the results should link to the main WC page.

MSPRC LETTERS:

Website: http://www.msprc.info/

- Click on the "Letters" icon.
- Enter the letter ID from the bottom right corner of the letter in the "Search Letters" box immediately below the large blue banner at the top of the page.

BWC CONTACTS:

- Denials of service & Medicare correspondence: **Shannon Watts**, Field Operations Administration
  phone: (614) 728-4611
  fax: (614) 621-3379
  e-mail: Shannon.B.1@bwc.state.oh.us
  U.S. Mail: Ohio Bureau of Workers' Compensation
  30 West Spring Street, L23
  Columbus, Ohio 43026
- Medicare Settlement issues: **Jeff Hartranft,** Settlement Attorney
  phone: (614) 466-9386
  e-mail: Jeffrey.H.12@bwc.state.oh.us
- Other Medicare issues: **Shadya Yazback**, Associate General Counsel
  phone: (614) 644-8915
  e-mail: Shadya.Y.1@bwc.state.oh.us

CASES OF INTEREST

Bradley v. Sebelius, 447 Fed.Appx.38 (11th Cir.2011) – CMS Manual is not entitled to deference by court.

In re: Avandia Marketing, Sales Practices and Products Liability Litigation, E.D.Pa., MDL No. 1871, 2011 WL 2340726 (June 13, 2011) – Under the MSPA, private carriers of Medicare Programs do not have the same rights as Medicare.

Citizens' Insurance Company v. United States, Fed.Cl. No. 11–257 C, 2011 WL 6934813(Dec. 29, 2011) – The MSPA does not create a right of action for an insurer seeking to recover overpayments made to Medicare.

Bond v. Rothlands, LLC, W.D.N.Y. Nos. 11-CV-275A, 11-CV-593A, 2011 WL 6100617(Dec. 7, 2011) – A federal court cannot assert jurisdiction over disputes where Medicare's failure to act is delaying settlement of state law cases.

Haro v. Sebelius, 789 F.Supp.2d 1179 (D.Ariz.2009) – CMS requiring conditional payment within 60 days of notice was neither rational nor consistent with Medicare's statutory provisions regarding beneficiary rights of appeal.

United States v. Harris, N.D.W.V. No. 5:08CV102, 2009WL 891931(Mar. 26, 2009), *aff'd* 334 Fed.Appx. 569 (4th Cir.2009) – Attorney held liable to Medicare for failure to resolve outstanding Medicare demand for payment from settlement proceeds.

United States v. Stricker, N.D.Ala. No. CV 09-BE-2423-E, 2010 WL 6599489 (Sep. 30, 2010), *appeal docketed* 11th Cir. No. 11-14745 – Two statutes of limitations applied in suit by US government against parties to mass tort settlement for failure to protect Medicare's interest: a three year statute of limitations against corporate defendants & insurers (based on underlying claim of tort injury), and a six year statute of limitations against plaintiffs' attorneys (based on False Claims Act).

Wilson v. State Farm, 795 F.Supp.2d 604 (W.D.Ky.2011) – Insurer's refusal to issue payment of settlement until Medicare lien was determined was reasonable and not bad faith under Kentucky's statute.

Porter v. Farmers' Insurance Co., N.D. Okla. No. 10-CV-116-GKF-PJC, 2012 WL 256014 (Jan. 27, 2012) – Nearly two-year delay in payment of settlement was reasonable given "harsh nature" of laws and regulations governing reimbursement of Medicare and confusion around plaintiff's counsel's communications with Medicare.

Smith v. Marine Terminals of Arkansas, E.D.Ark. No. 3:09–CV–00027–JLH, 2011 WL 3489806 (Aug. 9, 2011) – CMS declined to review MSA determination in a settlement within CMS thresholds, forcing parties to file Motion to Determine Set Aside Amount in federal court.

Hadden v. United States, 661 F.3d 298 (6th Cir.2011) – Scope of financial responsibility with respect to Medicare in a settlement is determined by the beneficiary's initial claim against the third party, even if the beneficiary ultimately compromises as to initial claim

MSPRC

CMS CENTERS for MEDICARE & MEDICAID SERVICES

Learn about your letter at www.msprc.info

[Print Date]

Insert name
Insert address 1
Insert address 2
Insert city, state, zip code

SUBJECT: Medicare Secondary Payer Rights and Responsibilities Letter for:
Beneficiary Name:
Medicare Number:
Case Identification Number:
Insurer Claim Number:
Insurer Policy Number:
Date of Incident:

Dear [Addressee Name]

You are receiving this letter because we were notified that you filed a liability insurance (including self-insurance), no-fault insurance, or workers' compensation claim. This is confirmation that a Medicare Secondary Payer (MSP) recovery case has been established in our system.

If we know that you have a lawyer or other person representing you, we have sent him or her a courtesy copy of this letter and you will see him or her listed as a "cc" at the end of this letter.

This letter gives you information on the following:

1. What happens when you have Medicare and file an insurance or workers' compensation claim;
2. What information we need from you;
3. What information you can expect from us and when;
4. How and when you are able to elect a simple, fixed percentage option for repayment; and,
5. How to contact us.

What Happens When You Have Medicare and You file a Liability Insurance (including Self- Insurance), No-Fault Insurance, or Workers' Compensation Claim

Applicable Medicare law says that liability insurance (including self-insurance), no-fault insurance, and workers' compensation must pay for medical items and services before Medicare pays. This law can be found at 42 U.S.C. Section 1395y(b)(2)(A) and (B).

However, Medicare makes "conditional payments" while your insurance or workers' compensation claim is being processed to make sure you get the medical services you need when you need them. If you get a(n) insurance or workers' compensation settlement, judgment, award, or other payment, Medicare is entitled to be repaid for the items and services it paid for conditionally.

If you receive a settlement, judgment, award, or other payment related to this claim and Medicare determines that it has made conditional payments that must be repaid, you will get a demand letter. The demand letter explains how Medicare calculated the amount it needs to be repaid and it also explains your appeal and waiver rights. *If you decide to appeal or request a waiver of recovery, Medicare will not take any collection action while your appeal or waiver of recovery request is being processed.*

What Information We Need From You

- ***Do you have a lawyer or other person representing you?***

  Medicare works to protect your privacy. We are not allowed to communicate with anyone other than you about your MSP case unless you tell us to do so. If you have a lawyer or other person representing you, please see the enclosed brochure. It explains what type of information we need from you in order to work directly with your lawyer or representative.

- ***Is the information we have on your claim correct?***

  If the information at the top of this letter is incorrect or if you filed a no-fault insurance or workers' compensation claim and do not see the insurer/carrier listed as a "cc" at the end of this letter, please contact the Coordination of Benefits Contractor (COBC) immediately at 1-800-999-1118.

- ***Has your insurance or workers' compensation claim already been resolved?***

  If you already got a settlement, judgment, award, or other payment, we need the following information:

  - The date and total amount of your settlement, judgment, award, or other payment.
  - A list of the attorney fees and other costs that you had to pay in order to get your settlement, judgment, award, or other payment.

  If your insurance or workers' compensation claim was dismissed or otherwise closed, we need documentation of that so that we are able to close your MSP case.

What Information Can You Expect From Us and When

- ***Medicare's Conditional Payment Amount***

  Our system will automatically send you a Conditional Payment Letter within 65 days of the date on this letter. It includes a Payment Summary Form, which lists medical items and services Medicare has paid for that we believe are related to your claim. Keep in mind that this list is not final or complete until your insurance or workers' compensation claim is resolved.

  If you would like the most up-to-date claims information, please visit www.MyMedicare.gov. Once your letter is issued, you will be able to access conditional payment amount information through the MyMSP tab, as well as current claims information using the MyMedicare.gov "blue button."

How to Elect a Simple, Fixed Percentage Option For Repayment If You Have Experienced a Physical Trauma-Based Injury

If you experienced a physical trauma-based injury and you get a liability insurance settlement, judgment, award, or other payment of $5,000 or less, Medicare offers the option to pay 25% of your gross settlement, judgment, award, or other payment, instead of the amount that Medicare would otherwise calculate.

If you wish to choose this option, you must formally elect it at the same time that you send us information on your settlement, judgment, award, or other payment. Please visit the Beneficiary or Attorney Toolkit sections of the MSPRC website (www.MSPRC.info) for all of the additional details. You will find model language that can be used to elect this option, as well as a special mailing address to ensure efficient processing.

How You Can Contact Us

Please mail any documents to: [MSPRC Address] or fax documents to: [MSPRC Fax]

For more information, please visit www. MSPRC.info or call 1-866-677-7220 (TTY/TDD for the hearing or speech impaired: 1-866-677-7294).

Sincerely,
MSP Recovery Contractor

Enclosure:
Medicare Secondary Payer Recovery Contractor Brochure

CC:

insert name
insert address 1
insert address 2
insert city, state, zip code

Beneficiary Name: insert name
Medicare Number: insert HICN
Case Identification Number:
Insurer Claim Number: insert Insurer Claim Number or N/A if not available
Insurer Policy Number: insert Insurer Policy Number or N/A if not available
Date of Incident: insert DOI

THIS IS NOT A BILL. DO NOT SEND PAYMENT AT THIS TIME.

Dear insert name:

If we know you have an attorney or other individual representing you in this matter, we are sending him/her a copy of this letter. If you have an attorney or other representative for this matter and his/her name is not shown as a "cc" at the end of this letter (indicating that he/she is receiving a copy), please contact us immediately. If you have any questions regarding this letter and are represented by an attorney or other individual in this matter, you may wish to talk to your representative before contacting us.

This letter follows a previous letter notifying you/your attorney of Medicare's priority right to recovery as defined under the Medicare Secondary Payer provisions. Because you were involved in an automobile, slip and fall, medical malpractice, or some other type of liability claim, the medical expenses are subject to reimbursement to Medicare from proceeds received pursuant to third party liability settlements, awards, judgments, or recovery.

However, we request that you/your attorney refrain from sending any monies to Medicare prior to submission of settlement information and receipt of a demand/recovery calculation letter from our office. This will eliminate underpayments, overpayments, and/or associated delays.

As of the date of this letter, Medicare has identified in conditional payments that we believe are associated with your claim, based upon the available information. You/ your attorney will find a listing of claims that comprise this total as an attachment to this letter. Please review this listing and inform us if you/ your attorney disagree with the inclusion of any claim, along with an explanation of why you/ your attorney disagree. If you/ your attorney believe this listing

to be incomplete or inaccurate, please include a description of the injury with other correspondence so that your claims may be accurately identified.

Please note: If the underlying claim involves ingestion, exposure, implantation, or other non-trauma based injury, this conditional payment amount will need to be revised. Please contact the MSPRC immediately with a description of the injury so that we may associate the appropriate claims with the case.

We have posted this conditional payment information under the "MyMSP" tab of the www.mymedicare.gov website. The information at www.mymedicare.gov will be updated weekly with any changes or newly processed claims. If you wish, you may track the medical expenses that were paid by Medicare, and if you have an attorney or other representative, provide him/her with this information. This may help you/ your attorney with finalizing your settlement.

Please be advised that we are still investigating this case file to obtain any other outstanding Medicare conditional payments. Therefore, the enclosed listing of current conditional payments (including a response of zero amount) is not a final listing and will be updated once we receive final settlement information from you. It is in your best interest to keep Medicare's payments and the statutory obligations to satisfy Medicare in mind when the final dollar amount is negotiated and accepted in resolution of this claim with the third party.

If the case has settled, please furnish our office with a copy of:

1) The settlement agreement from the third party payer showing the total amount of the settlement, signed and dated, AND

2) Your closing statement reflecting the actual amount of the attorney's fees and cost (excluding medical bills)

If you have any questions concerning this matter, please call the Medicare Secondary Payer Recovery Contractor (MSPRC) at 1-866-677-7220 (TTY/TDD: 1-866-677-7294 for the hearing and speech impaired) or you may contact us in writing at the address below. If you contact us in writing, please be sure to include the beneficiary's name and Medicare health insurance claim number.

Medicare Secondary Payer Recovery Contractor
<select option>
PO Box <select option>
Oklahoma City, OK 73113

Sincerely,

MSPRC

insert site identifier

insert cc:

Payment Summary Form

REPORT NUMBER: XMCAN-55
CONTRACTOR: MSPRC WC

DATE: 12/03/2019

BENEFICIARY NAME: [redacted]
BENEFICIARY HICN: [redacted]

CASE ID: [redacted]
CASE TYPE: WORKERS' COMPENSATION
[redacted]

TOS	ICN	LINE	PROCESSING CONTRACTOR	PROVIDER NAME	DIAGNOSIS&CD	FROM DATE	TO DATE	TOTAL CHARGES	REIMBURSED AMOUNT	CONDITIONAL PAYMENT
40	20434102722402	0	332	[redacted]	71941,7291	10/29/2004	11/22/2004	$1,373.50	$373.09	$373.09
40	20523801320402	0	332	[redacted]	7265,4019,7242	08/20/2005	08/20/2005	$916.50	$146.16	$146.16
40	20609001259502	0	332	[redacted]	3314,4019	03/24/2006	03/24/2006	$303.25	$54.61	$54.61
40	20612302169402	0	332	[redacted]	3488	04/13/2006	04/13/2006	$152.50	$26.57	$26.57
40	20633500511208	0	332	[redacted]	72210,7213,7242	09/15/2006	09/15/2006	$2,804.25	$347.40	$347.40
40	20732501946302	0	332	[redacted]	72402,72252	11/15/2007	11/15/2007	$2,609.25	$210.24	$210.24
71	360204225439790	1	883	[redacted]	8406	08/05/2004	08/05/2004	$992.00	$343.28	$343.28
71	360204253823020	1	883	[redacted]	72761,71591	09/01/2004	09/01/2004	$130.00	$74.78	$74.78
71	360204253823020	2	883	[redacted]	72761,71591	09/01/2004	09/01/2004	$90.00	$24.58	$24.58
71	360304310109500	1	883	[redacted]	71941	09/14/2004	09/14/2004	$75.00	$40.90	$40.90
71	360305292058260	1	883	[redacted]	7393,72252,7291	03/29/2005	03/29/2005	$125.00	$0.00	$0.00
71	360305292058260	2	883	[redacted]	7393,72252,7291	03/29/2005	03/29/2005	$90.00	$0.00	$0.00
71	360305292058260	3	883	[redacted]	7393,72252,7291	03/29/2005	03/29/2005	$60.00	$20.48	$20.48
71	360305292058260	4	883	[redacted]	7393,72252,7291	03/29/2005	03/29/2005	$25.00	$0.00	$0.00
71	360305292058260	5	883	[redacted]	7393,72252,7291	03/29/2005	03/29/2005	$22.00	$0.00	$0.00
71	360305168041450	1	883	[redacted]	7393,72252,7	04/01/2005	04/01/2005	$60.00	$20.48	$20.48

MSPRC

CMS CENTERS for MEDICARE & MEDICAID SERVICES

Learn about your letter at *www.msprc.info*

insert name
insert address 1
insert address 2
insert city, state, zip code

RE: Name:
HIC#:
Date of Incident:
Debt Identification No:
Demand Amount:

Dear insert name:

Please note that if we know that you have an attorney or other individual representing you in this matter, we are sending him/her a copy of this letter. If you have an attorney or other representative for this matter and his/her name is not shown as a "cc" at the end of this letter (indicating that he/she is receiving a copy), please contact us immediately. If you have any questions regarding this letter and are represented by an attorney or other individual in this matter, you may wish to talk to your representative before contacting us.

We are writing to you because we recently learned that you have made a liability claim relating to an illness, injury, or incident occurring on or about and obtained a recovery. We have determined that you are required to repay the Medicare program for the cost of medical care it paid relating to your liability recovery. (The term "recovery" includes a settlement, judgment, award, or any other type of recovery.)

We hope that you will find the answers to some of the questions you may have about this letter below. Parts I and II of this letter explain the federal law that requires you to pay Medicare back and the way we determined the amount you are required to repay. We have provided instructions for repaying Medicare in Part III of this letter. You have the right to appeal our determination if you disagree with it, and you also have the right to request that the Medicare program waive recovery of the amount you owe in full or in part. Instructions for requesting the waiver of recovery and appeal are provided in Part IV of this letter. Part V of this letter explains the interest charges that apply if you do not repay Medicare within sixty (60) days from the date of this letter and tells you about certain actions Medicare may decide to take if you fail to repay the amount you owe. Finally, Part VI identifies whom you should contact if you have questions about this letter.

CLIENT IN ORDER REVIEW

ML041NGHP

I. Why am I required to repay Medicare?

You are required to repay Medicare because Medicare paid for medical care you received related to your liability recovery. The Medicare Secondary Payer (MSP) law allows Medicare to pay for medical care received by a Medicare beneficiary who has or may have a liability claim. However, the law also requires Medicare to recover those payments if payment of a liability settlement, judgment, recovery, or award has been or could be made. Congress passed the MSP law because it wanted to make sure that the Medicare Trust Funds would have enough money to pay for medical care that beneficiaries may need in the future. Congress decided that, if a liability recovery was available to pay for a Medicare beneficiary's medical care, then that money should be used to pay for the care and any amounts already paid by Medicare should be refunded to the Medicare Trust Funds.

If you would like to read the MSP law, you can find it in Title 42 of the United States Code, Section 1395y(b)(2). You can also find the regulations that explain how the Medicare program recovers amounts it is owed under the MSP law in Title 42 of the Code of Federal Regulations, beginning at Section 411.20. You can also learn more about how the MSP law works by contacting your local Social Security office or by visiting www.medicare.gov

II. How did Medicare decide how much money I owe?

The Medicare program paid for medical care related to your liability recovery. We have enclosed a list of the payments Medicare made related to your recovery with this letter. The Medicare program generally reduces the amount a Medicare beneficiary is required to repay to take into account the costs (such as attorney's fees) paid by the beneficiary to obtain his or her liability recovery. You can find the formula we use to decide how much the amount of this reduction should be at 42 C.F.R., sub-section 411.37. We have applied the formula and determined that the amount you owe Medicare is .

This letter related only to money paid from your current recovery. If, in the future, you receive additional money from this liability recovery, or any other liability recovery, you must let us know.

III. What do I need to do to repay Medicare the amount I owe?

You must repay Medicare within sixty (60) days of the date of this letter . Please send a check or money order for insert demand amount, made payable to Medicare, to us at the address listed at the end of this letter. Please make sure to include your name and Medicare number on the check or money order and include a copy of this letter with your payment.

The amount requested in this letter may not include payments received prior to the issuance of this demand letter dated . Upon issuing a check, please deduct previous payments made to the MSPRC for the above referenced debt.

CURRENTLY UNDER REVIEW

MSPRC
CMS CENTERS for MEDICARE & MEDICAID SERVICES
Learn about your letter at www.msprc.info

IV. What rights do I have if I disagree with the amount this letter says I owe or think that I should not have to repay Medicare for some other reason?

Rights to Request a Waiver—You have the right to request that the Medicare program waive recovery of the amount you owe in full or in part. Your right to request a waiver is separate from your right to appeal our determination, and you may request both a waiver and an appeal at the same time. The Medicare program may waive recovery of the amount you owe if you can show that you meet both of the following conditions:

1. This overpayment (for purposes of requesting waiver of recovery, the amount you owe is considered an overpayment) was not your fault, because the information you gave us with your claims for Medicare benefits was correct and complete as far as you knew; and when the Medicare payment was made, you thought that it was the right payment;

   AND

2. Paying back this money would cause financial hardship or would be unfair for some other reason.

If you believe that both of these conditions apply to you, you should send us a letter that explains why you think you should receive a waiver of the amount you owe. If you request a waiver, we will send you a form asking for more specific information about your income, assets, expenses, and the reasons why you believe you should receive a waiver. If we are unable to grant your request for a waiver, we will send you a letter that explains the reason(s) for our decision and the steps you will needs to follow to appeal that decision if it is less than fully favorable to you.

Right to Appeal- You also have the right to appeal our determination if you disagree that you owe Medicare as explained in Part I of this letter, or if you disagree with the amount that you owe Medicare as explained in Part II of this letter. To file an appeal, you should send us a letter explaining why you think the amount you owe Medicare is incorrect and /or any reason(s) why you disagree with our determination. Once we receive your request for appeal, we will decide whether our determination that you must repay Medicare is correct and send you a letter that explains the reasons for our decision. Our letter will also explain the steps you will need to follow to appeal that decision if it is less than fully favorable to you.

You have 120 days from receipt of this letter to file an appeal. We must assume that you received this letter within five (5) days of the date of the letter unless you furnish us with proof of the contrary.

CURRENTLY UNDER REVIEW

If you do not already have an attorney or other representative and you want help with your appeal or request for waiver, you can have a friend, lawyer, or someone else help you. Some lawyers do not charge unless you win your case. There are groups, such as lawyer referral service that can help you find a lawyer. There are also groups, such as legal aid services, that will provide free legal services if you qualify.

V. What happens if I do not repay Medicare the amount I owe?

Please note that, if you do not repay Medicare in full by insert date, 59 days after the demand date, you will be required to pay interest on any remaining balance, from the date of this letter, at a rate of insert current interest rate per year. If the debt is not fully resolved within 60 days of the date of this letter, interest is due and payable for each full 30 day period the debt remains resolved. By law, all payments are applied to interest first, principal second. You can find the regulation that explains interest charges at 42 C.F.R., sub-section 411.24(m). To avoid having to pay interest, you should repay Medicare in full within sixty (60) days of the date of this letter; even if you decide to request a full or partial waiver of the amount you owe or decide to appeal our determination (see Part IV of this letter.) If you receive a waiver of recovery or if you are successful in appealing our decision, Medicare will refund amounts you have already paid.

If you can't repay Medicare in one payment, you may ask us to consider whether to allow you to pay regular installments. If you make installment payments, you should be aware that your payments will be applied to any interest due first and then to the outstanding principal amount.

You should also be aware that if you do not repay Medicare in full, it may decide to recover any amounts you owe (including accrued interest) from any Social Security or Railroad Retirement benefits to which you might otherwise be entitled, or from future Medicare payments. Your failure to respond as requested within sixty (60) days of the date of this letter may result in initiation of additional recovery procedures without further notice, including referral to Department of Justice for legal action and/or the Department of the Treasury for other collection actions. You should be aware that the Debt Collection Improvement Act of 1996 requires Federal Agencies to refer debts to the Department of Treasury or its designated debt collection center for recovery action including collection by offset against any monies otherwise payable to debtor by any agency of United States and through other collection methods. Under this and other authorities (31 U.S.C. 3720A), the Internal Revenue Service may collect this debt by offset against tax refunds owed to individuals or other entities. Please be advised that Medicare does not refer debts to Treasury for collection if they are the subject of an administrative appeal or judicial review. Before Medicare refers your debt to Treasury, you will be provided with notice of the intended referral, including information concerning appropriate steps to take to avoid referral.

CURRENTLY UNDER REVIEW

VI. Who should I contact if I have questions about this letter?

This office is the Medicare contractor responsible for handling your case. If you have any questions about this letter, or questions about Medicare's recovery rights in general please contact MSPRC at 1-866-677-7220 (TTY/TDD: 1-866-677-7294 for any hearing and speech impaired) or the address listed below.

Please also make sure that any letters you send us include your name, your Medicare Health Insurance Claim Number (this is the number found on your red, white and blue Medicare card), and the date of the illness, injury or incident. Providing us with this information will help us respond more quickly to any questions you may have.

Medicare Secondary Payer Recovery Contractor
<select option>
PO Box <select option>
Oklahoma City, OK 73113

Sincerely,

MSPRC insert title

insert site identifier

insert cc: attorney or other representative name if applicable

Enclosure: Payment Summary Form

CURRENTLY UNDER REVIEW

Ohio | Bureau of Workers' Compensation
30 W. Spring St.
Columbus, OH 43215-2256

Governor **John R. Kasich**
Administrator/CEO **Stephen Buehrer**

ohiobwc.com
1-800-OHIOBWC

[Date]

[Addressee]
[Address]

Re: [IWName]
HICN: [HICN]

[Addressee]:

The Bureau of Workers' Compensation ("BWC") is in receipt of your letter dated [LetterDate] regarding an alleged debt due the Center for Medicare and Medicaid Services for conditional payments made by Medicare to cover the costs of medical services provided [IWName] (the "Beneficiary"). A copy of the letter is enclosed.

As a state-run insurance fund, BWC's reimbursements for medical services are governed by the Ohio Revised Code and Ohio Administrative Code. BWC's ability to pay medical costs is strictly limited to what is permitted under statutory authority and implementing rules, and BWC is limited in its ability to pay providers that are not certified by the agency to participate in the Health Partnership Program ("HPP"). Further, BWC has a fiduciary obligation to Ohio employers to pay only those costs related to allowed conditions associated with a workplace injury.

BWC disputes the debt alleged in your letter of [LetterDate] for the following reason(s):

- ☐ BWC has not received any prior correspondence relating to conditional payments for the Beneficiary. Please provide any relevant correspondence on this matter.
- ☐ BWC requires additional information to confirm the Beneficiary is an injured worker with an allowed workers' compensation claim. Please provide the Beneficiary's health insurance claim number or social security number and the date of injury.
- ☐ The Beneficiary did not have an allowed workers' compensation claim for the service dates identified on the Payment Summary Form.
- ☐ The date of injury identified does not correspond to the date of injury for the Beneficiary's allowed worker's compensation claim(s). Please confirm the date of injury corresponding to the charges identified.
- ☐ BWC requires additional information to determine the validity of the charges identified on the Payment Summary Form. For each charge identified on the Payment Summary Form, please provide the information identified on the attached List of Required Data Elements.
- ☐ The charges identified are not related to allowed conditions for the Beneficiary's worker's compensation claim.
- ☐ The charges identified are not covered by BWC.
- ☐ The charges identified are in excess of BWC's fee schedule allowance for the services identified. BWC's fee schedule permits payment in the aggregate amount of $_____.
- ☐ The provider(s) associated with the charges identified are not certified or enrolled to participate in the Health Partnership Program.
- ☐ BWC has reimbursed the provider(s) for the charges identified.
- ☐ BWC is no longer a primary payer with respect to the medical costs for the Beneficiary. The Beneficiary's workers' compensation claim was settled prior to the service dates identified on the Payment Summary Form. Per the terms of the worker's compensation settlement, any portion of the Beneficiary's settlement allocable to future medical costs was to be deposited by the Beneficiary in a Medicare Set-Aside Trust Account to cover the cost of medical costs associated with treatment of the Beneficiary's workplace injury.

SAMPLE

Please provide any information requested to allow BWC to determine the validity of the alleged debt. Return such information with a copy of this letter to:

[BWC Employee], [BWC Title]
[BWC Address]

Your cooperation in this matter is appreciated.

Sincerely,

[BWC Employee], [BWC Title]
[BWC Address]
[BWC Phone]

CC: [IWName], [Employer], Electronic Claim File
Encl.: [Addressee] letter dated [LetterDate]
List of Required Data Elements

SAMPLE

List of Required Data Elements

These data elements are the minimum information necessary for the Bureau of Workers' Compensation ("BWC") to issue payment for services. Ohio law requires BWC to ensure that each payment made to a provider is appropriate and related to the allowed conditions in a claim. BWC must adhere to established billing and reimbursement protocols.

For charges billed on a UB, please provide:

1. **Servicing Provider NPI:** BWC must validate the provider status as a BWC certified or enrolled in the Health Partnership Program.
2. **ICD-9 procedure codes (inpatient):** BWC must determine the relatedness of the condition for which the service is rendered to the conditions allowed in the Beneficiary's workers' compensation claim ("Allowed Conditions").
3. **Revenue Codes:** BWC must determine the relatedness of the service provided to Allowed Conditions.
4. **CPT codes (outpatient) or Level II or Level III HCPC (outpatient):** BWC must determine the relatedness of the procedure completed to Allowed Conditions.
5. **Modifier (outpatient):** BWC must take into account any additional detail pursuant to generally accepted coding principles regarding the procedure completed (e.g., extra time needed for procedure) to assist in determining not only the relatedness of the service provided to Allowed Conditions, but also the appropriate reimbursement level for the service according to BWC's fee schedule.
6. **Units of Service:** BWC must determine the relatedness of the number of units of a specific procedure performed to Allowed Conditions.

For charges billed on a CMS 1500, please provide:

1. **Servicing Provider NPI:** BWC must validate the provider status as a BWC certified or enrolled in the Health Partnership Program.
2. **Place of service:** BWC must determine the relatedness of where the service was provided (outpatient, providers office, etc.) to Allowed Conditions.
3. **CPT codes or Level II or Level III HCPC:** BWC must determine the relatedness of the procedure completed to Allowed Conditions.
4. **Modifier:** BWC must take into account any additional detail pursuant to generally accepted coding principles regarding the procedure completed (e.g., extra time needed for procedure) to assist in determining not only the relatedness of the service provided to Allowed Conditions, but also the appropriate reimbursement level for the service according to BWC's fee schedule.
5. **Units of Service:** BWC must determine the relatedness of the number of units of a specific procedure performed to Allowed Conditions.

SAMPLE

Ohio | Bureau of Workers' Compensation

Settlement Agreement and Application for Approval of Settlement Agreement

(For state-fund claims only)
(Self-insured claims file SI-42)

File this application to settle workers' compensation claims with state-fund employers. Ohio Revised Code 4123.65 requires the injured worker and the employer to sign settlement applications unless the employer is no longer doing business in Ohio. If the claim to be settled is a state-fund claim, and the employer is now self-insuring, BWC charges the self-insuring employer dollar for dollar for any portion of the settlement attributed to past, present or future Disabled Workers' Relief Fund (DWRF) liability.

By filing this application, the injured worker and the employer agree all unresolved issues will be suspended. All ongoing compensation and medical payments, however, will continue until the effective settlement date. The effective settlement date is the mailing date of BWC's approval of settlement agreement.

Please Note: The persons involved with filing this settlement agree if any other claim(s) or part of any claim(s) being settled has been recognized or allowed, then the cost of all medical services, hospital bills, drugs and medicines with date(s) of service or filling of related prescriptions (not to exceed a 30-day supply) provided to the injured worker before the effective settlement date, shall be the responsibility of the state insurance fund, provided such costs result from the allowed conditions of the claims and are properly payable under current medical payment guidelines. The costs of all medical services, hospital bills, drugs and medicine with the date(s) of service of filling of related prescriptions (not to exceed a 30-day supply) provided to the injured worker on or after the effective settlement date are the responsibility of the injured worker.

☐ By initialing this box, the injured worker acknowledges he or she has read and understands the above statement.

Special Notice to Medicare Beneficiaries

Medicare does not pay medical bills for conditions covered by your workers' compensation claim. If a settlement of your workers' compensation claim is reached, and the settlement allocates certain amounts for future medical expenses, Medicare does not pay for those services until medical expenses related to your workers' compensation claim equal the amount of the lump sum settlement allocated to future medical expenses. For additional information, please call the Medicare coordination of benefits contractor at (800) 999-1118.

Instructions

- For lost-time and medical-only claims, mail this completed application to your nearest customer service office.
- Call **1-800-OHIOBWC** for the address of your local customer service office.
- To settle a claim with a self-insuring employer, please complete and forward form SI-42, or contact your self-insuring employer for other forms setting out the agreement between the injured worker and self-insuring employer.
- To facilitate settlement of this claim, please forward any unpaid bills to your managed care organization.
- Include a list of any unpaid bills you are aware of or attach copies of any unpaid bills or statements.

Application for Approval of Settlement Agreement

The injured worker and employer, as agreed to below, make application to BWC for approval of a final settlement in the injured worker's claim(s).

Parties to the Claim

Injured worker name	Social Security number	Date of birth	Phone number ( )
Address	City	State	ZIP code
Injured worker representative name	ID number		Phone number ( )
Address	City	State	ZIP code
Employer name	Risk number	Fax number ( )	Phone number ( )
Address	City	State	ZIP code
Employer representative name		Fax number ( )	Phone number ( )
Address	City	State	ZIP code

Information on other relevant employers is attached ☐ Yes ☐ No

Claim(s) to be Included In Settlement

Claim Number*	Requested amount for complete settlement**	Proposed allocation of requested settlement amount: Indemnity	Prescription drugs	Medical

*List any claims specifically excluded from settlement: _____

**Please explain any request for a partial settlement: _____

Clearly set forth the circumstances by reason of which the proposed settlement is deemed desirable.

_____

Has information on other relevant claims been attached? ☐ Yes ☐ No	Are you receiving, or have you applied for Medicare benefits? ☐ Yes ☐ No		
Are you receiving medical treatment at this time? ☐ Yes ☐ No	Who is your treating physician(s)?		Wages at time of injury?
Are you currently working? ☐ Yes ☐ No	If yes, who is your present employer?	What is your present occupation?	What are your present wages?

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Employer Signature
(Required by ORC 4123.65 unless the employer is no longer doing business in Ohio)

Instructions
- Please check one of the following boxes and sign below. Your signature does not waive the employer's right to withdraw consent to the settlement by providing written notice to the employee and the BWC administrator within 30 days after the administrator issues the approval of the settlement agreement.

☐ A. The employer is supportive of and agreeable to a settlement up to the amount listed on the front of this application.

☐ B. The employer does not agree with the requested settlement terms but will participate with the BWC in the negotiation process.

☐ C. The employer is supportive of and agreeable to settlement of the claims listed on the front of this application. However, the employer will not participate in the settlement negotiations and requests the BWC to negotiate the settlement on behalf of the employer.

☐ D. The employer is not agreeable to settlement of the claim(s) listed on the front of this application.

By signing this agreement, an employer that is currently self-insured acknowledges its obligation to reimburse BWC for the portion of the settlement amount allocated to DWRF costs of the above-referenced claim(s). BWC will bill the DWRF portion of the settlement to the self-insuring employer, even if the injured worker has not yet been determined to be permanently and totally disabled or currently eligible for DWRF benefits.

Employer signature	Title	Date
Telephone number ( )	Fax number ( )	

Settlement Agreement and Release

As set forth in this agreement, the injured worker for and in consideration of the receipt of the settlement amount approved by the BWC, which sum will be paid from the appropriate fund on behalf of the employer after approval by the BWC administrator, unless within 30 days after such approval the administrator, the employer or the injured worker, withdraws consent to, or unless the Industrial Commission of Ohio (IC) disapproves the agreement, does hereby for him/herself and for anyone claiming by, through or under him/her, forever release and discharge the above referenced employer, its officers, employees, agents, representatives, successors and assigns, the IC, the BWC, the appropriate fund, and all persons, firms or corporations from any or all claims, demands, actions or causes of action incurred on or prior to the date of the approval of this agreement, arising out of Ohio Revised Code Chapter 4121. or 4123., which he/she now has or which he/she hereafter claim to have, whether known or unknown by reason of or in any manner growing out of the claims or parts thereof set forth above. The injured worker further understands and agrees that any amount paid pursuant to this agreement is subject to any valid court-ordered child support. The persons involved with filing this settlement agree that if any claim(s) or part of any claim(s) being settled has been recognized or allowed, then the cost of all medical services, hospital bills, drugs and medicines with date(s) of service or filling of related prescriptions (not to exceed a 30-day supply) provided to the injured worker before the effective settlement date, shall be the responsibility of the state insurance fund, provided such costs result from the allowed conditions of the claims and are properly payable under current medical payment guidelines. The costs of medical services hospital bills, drugs and medicines (not to exceed a 30-day supply) provided to the injured worker on or after the effective date of the settlement date are the responsibility of the injured worker.

☐ By initialing this box, the injured worker acknowledges he or she has read and understands the above statement.

Also as set forth above, the injured worker understands that any settlement amounts allocated for future medical services must be used for medical services before Medicare will consider payment for services for the conditions of the workers' compensation claim.

Settlement of any claim(s) included in this agreement in no way impairs BWC's statutory rights to subrogation recovery. Also, be advised that upon a finding of fraud, the administrator retains the right to rescind this settlement agreement and re-open the claim for an administrative overpayment hearing and referral for criminal prosecution.

Injured worker signature	Date

Power of Attorney

By signing below the injured worker grants a limited power of attorney to the attorney of record for the purpose of receiving the warrant issued because of this settlement agreement.

Injured worker signature	Date
Representative signature	Date

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Ohio | Bureau of Workers' Compensation

Amended Settlement Agreement and Release

Injured worker name	Employer name	Date

As amended below, the injured worker and the employer have agreed to the terms in the *Application for Approval of Settlement Agreement,* which the injured worker signed on _____, and filed with the BWC.

☐ The settlement amount shall be ..... $ _____

☐ The settlement **shall include** the claim number(s) listed and be allocated as follows:

Claim number(s)	Indemnity	Prescription drugs	Medical	Total
				$
				$
				$

☐ The settlement **shall exclude** claim number(s) _____ _____ _____

☐ Other _____

Please complete Settlement Agreement and Release section, below. Employer signature is required below, unless the amended settlement is less than the amount the employer previously approved in writing.

Employer Information

Employer signature	Title	Date

Settlement Agreement and Release

As set forth in this agreement, the injured worker for and in consideration of the receipt of the settlement amount approved by the BWC, which sum will be paid from the appropriate fund on behalf of the employer after approval by the BWC administrator, unless within 30 days after such approval the administrator, the employer or the injured worker, withdraws consent to, or unless the Industrial Commission of Ohio (IC) disapproves the agreement, does hereby for him/herself and for anyone claiming by, through or under him/her, forever release and discharge the above referenced employer, its officers, employees, agents, representatives, successors and assigns, the IC, the BWC, the appropriate fund, and all persons, firms or corporations from any or all claims, demands, actions or causes of action incurred on or prior to the date of the approval of this agreement, arising out of Ohio Revised Code Chapter 4121. or 4123., which he/she now has or which he/she hereafter claim to have, whether known or unknown by reason of or in any manner growing out of the claims or parts thereof set forth above. The injured worker further understands and agrees that any amount paid pursuant to this agreement is subject to any valid court-ordered child support. The persons involved with filing this settlement further agree that if any claim(s) or part of any claim(s) being settled has been recognized or allowed, then the cost of all medical services, hospital bills, drugs and medicines with date(s) of service or filling of related prescriptions (not to exceed a 30-day supply) provided to the injured worker before the effective settlement date, shall be the responsibility of the state insurance fund, provided such costs result from the allowed conditions of the claims and are properly payable under current medical payment guidelines. The costs of all medical services, hospital bills, drugs and medicine with the date(s) of service of filling of related prescriptions (not to exceed a 30-day supply) provided to the injured worker on or after the effective settlement date are the responsibility of the injured worker.

☐ **By initialing this box, the injured worker acknowledges he or she has read and understands the above statement.**

Also as set forth above, the injured worker understands that any settlement amounts allocated for future medical services must be used for medical services before Medicare will consider payment for services for the conditions of the workers' compensation claim.

Settlement of any claim(s) included in this agreement in no way impairs BWC's statutory rights to subrogation recovery. Also, be advised that upon a finding of fraud, the administrator retains the right to rescind this settlement and re-open the claim for an administrative overpayment hearing and referral for criminal prosecution.

Injured worker signature	Date

Power of Attorney

By signing below, the injured worker grants a limited Power of Attorney to the attorney of record for the purpose of receiving the warrant issued pursuant to the amended settlement terms.

Injured worker signature		Date
Representative signature	Representative I.D. number	Date

DISTRIBUTION: 1 copy each to: Injured worker - Employer - Injured worker's representative - Employer's representative - Claim file

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