

Evans & Dixon, LLC
MEDICARE LIENS

By

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As Amended Through 3/1/04

MEDICARE LIENS

Checklist for Medicare's Interests in Workers Compensation Cases

I. Is the claimant currently a Medicare beneficiary?

(a) If the claimant is age 65 or over-automatic qualification

(b) If claimant is under age of 65 and receives Social Security Disability and is Medicare recipient or soon to be Medicare recipient

(c) If so, you must do the following in all cases:

(1) Contact the appropriate vendor to determine if there are any existing liens or payments made by Medicare for the work related condition.

(a) Missouri cases contact:

Mutual of Omaha
Attn: Medicare Secondary Payer
P.O. Box 1602
Omaha, NE 68101

(b) Illinois cases contact:

AdminiStar Federal
225 N. Michigan Ave., 22nd Floor
P.O. Box 812912
Chicago, IL 60601
Attn. MSP Liability Unit
Fax # (312) 965-8143

Note: By 9/04, CMS should have a centralized system that will not require you to search individual Regional office contractors.

(2) Notify Medicare of an existing W.C. claim

(a) Contact:

Medicare - Coordination of Benefits Contractor
MSP Claims Investigation Project
P.O. Box 5041
New York, NY 10274-0125

(3) As of 5/1/04 contact new central office for all set-aside proposals

(a) Contact:

CMS

c/o Coordination of Benefits Contractor

P.O. Box 660

New York, NY 10274-0660

Attn: WCSA Proposal

(b) Regional office still maintains final decision making authority on set-aside agreement or waiver

(c) Information CMS will need to consider set-aside trust

(1) Release by claimant

(2) Name, address and age of claimant

(3) Claimant's social security number

(4) Rated age on letterhead of company performing service

(5) Information about WC claim

(a) date of accident

(b) nature of injury

- (c) employer and WC carrier
with claim number
- (d) State claim or injury number

- (6) Medical information
 - (a) from last 2 years
 - (b) report from physician about
need for future medical care
detailing the type of medical
care anticipated
- (7) Life Care Plan and/or proposed
fee schedule

II. Does the injured individual have a “Reasonable Expectation” of Medicare enrollment.

- (1) Within 30 months of the settlement date, and
- (2) The anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be greater than \$250,000.00

If so, Medicare’s interests must be protected

A. Factors to be considered in determining

“Reasonable Expectation”.

(1) Factors itemized in 2nd memo of 4/21/03

(a) The individual has applied for SSDI

(b) The individual has been denied SSDI but anticipates appealing that decision

(c) The individual is in the process of appealing and/or refiling for SSDI

(d) The individual is 62 years and 6 months old (i.e.), (be eligible for Medicare based upon his/her age within 30 months); or

(e) The individual has an End Stage Renal Disease (ESRD) condition but does not yet qualify for Medicare based upon ESRD.

(2) Other possible factors

(a) If claimant has been deemed to be PTD, even if claimant has not yet applied for SSDI, because SSA can back date eligibility for up to 17 months

(b) If an expert has stated that claimant cannot return to engage in any reasonable gainful employment

(c) If indemnity reserves are \$100,000.00 or more

B. Factors that constitute “\$250,000.00 or more”.

(1) Threshold amount includes potential exposure on future medicals and indemnity combined

(2) Use uncommuted value not present value, i.e., if the lump sum is for \$180,000.00 present value but the future value is \$300,000.00, this exceeds the \$250,000.00 threshold

(3) Consider reserves on both medical and indemnity

(4) Expected settlement amount is \$250,000.00 or more

C. Medicare reserves the right to change these thresholds at anytime. Please note, these thresholds are policy statements and not regulations.

D. Criteria that Medicare uses to determine whether the amount of a lump sum or structured settlement has

sufficiently taken its interests into account.

- (1) Date of Entitlement to Medicare
- (2) Basis for entitlement to Medicare
- (3) Type and severity of injury or illness
- (4) Age of beneficiary
- (5) W/C classification of beneficiary
- (6) Prior medical expenses paid by W/C due to the injury or illness in the 1 or 2 year period after the condition has stabilized
- (7) Amount of lump sum or amount of structured settlement
- (8) Is the commutation for the beneficiary's lifetime or for a specific time period
- (9) Is the beneficiary living at home, in a nursing home or receiving assisted living care, etc.
- (10) Are the expected expenses for Medicare covered

items and services appropriate in light of the beneficiary's condition

III. Types of W/C Settlements

(1) Compromise lump-sum settlement

(a) Legitimate issues considered by Medicare

(1) Causation/Pre-existing condition

(2) Accident/AOICO

(3) Employee/Employer relationship

(b) Lump sum settlements are not automatically considered compromise cases

(2) Commutation settlements

(a) Set aside arrangements to protect Medicare must be used if other eligibility requirements are met

(b) Lump sum settlements should not automatically be considered commutation cases simply because a W/C Carrier does admit to be liable - this is not the sole determining factor

(3) Combination - commutation and compromise settlement

(a) If future medical is an aspect of the settlement, a Set-Aside Trust is recommended

(b) Medicare will not pay for work related medical expenses related to the injury or disease equal the amount of the lump sum payment

IV. Medicare cannot be waived by contract.

(1) medicare will not recognize language in settlements that promise not to bill Medicare in lieu of including those services in Set-Aside Agreement.

V. It is unnecessary to establish a Set-Aside Arrangement when all the following are true:

(a) The facts of the case demonstrate that the claimant is only being compensated for past medical expense;

(b) There is no evidence that the individual is attempting to maximize other aspects of the settlement to the detriment of Medicare; and

(c) Claimant's treating physicians conclude in writing that to a reasonable degree of medical certainty that the claimant will no longer require any Medicare - covered treatments related to the workers' compensation injury.

(d) Please note: If claimant is already Medicare eligible, you must still contact CMS and request a waiver letter.

VI. Settlement with Medicare

(a) If Medicare approves a Set-Aside Trust, there is no further exposure

1. Things needed:

(A) Life Care Plan or similar evaluation from a non-treating physician, if the physician does all of the following:

- (a) Examines the claimant
- (b) Reviews the medical records
- (c) Contacts the treating physicians, (if applicable)
- (d) Is available to answer CMS questions
- (e) Prepares a report that summarizes the

above; and
(f) Offers a written medical opinion as to all the reasonably anticipated future medical needs of the claimant related to the claimant's work injury

(b) Understanding of Medicare covered items

(c) Rated age - if applicable

(d) Approved Annuity Plan - if applicable

B. Recommended that Medicare Set-Aside Trust be approved before the State W/C settlement approval - consider consulting with appropriate ALJ or Arbitrator

MEDICARE SECONDARY PAYER REGIONAL OFFICE COORDINATORS
(WORKERS' COMPENSATION CONTACTS)

NAME	REGIONAL OFFICE	PHONE
James Bryant Thomas Hatchfield Sedric Goutier	I--Boston	617-565-1331 617-565-1254 617-565-1228
Jerry Kerr	II--New York	212-264-3760
	III--Philadelphia	
Catherine McCoy Maria Kuehn		215-861-4250 215-861-4306
Juanita Dixon Geraldine Taylor	IV--Atlanta	404-562-7313 404-562-7311
Janice Edwards	V--Chicago	312-886-3256
Barry Thomas	VI--Dallas	214-767-6455
Doug Rundle	VII--Kansas City	816-426-6387
Cindy Christensen	VIII--Denver	303-844-7095
Rosie Sagum Tom Bosserman	IX--San Francisco	415-744-3655 415-744-4907
Jean Tsutakawa Jonella Windell	X--Seattle	206-615-2382 206-615-2385

Note: If the caller is simply contacting Medicare for the first time in order to report workers' compensation coverage (as opposed to seeking out RO approval of a proposed Medicare set-aside arrangement), then the caller should contact the Coordination of Benefits Contractor at 1-800-999-1118.