



June 7, 2023

UPDATE: Medicare Secondary Payer (MSP) and Settlements Related to Alleged Exposure to Roundup

Background on Medicare Secondary Payer

Applicable Medicare law provides that liability insurance (including self-insurance), no-fault insurance, and workers' compensation are responsible for the cost of medical items and services provided to Medicare beneficiaries. This applies when a beneficiary receives care even if the original underlying incident or exposure occurred before the individual became eligible for or entitled to Medicare (as long as it occurred on or after December 5, 1980). To ensure access to care, a beneficiary's doctor or other providers may bill Medicare if the insurance company or other party responsible for paying primary does not pay the claim promptly (usually within 120 days), and Medicare may make a conditional payment to pay the bill. These payments are "conditional" because if the beneficiary receives a settlement, judgment, award, or other payment that compensates for medical care, Medicare is entitled to be repaid for the items and services it paid.¹ Medicare law requires that Medicare recover these payments so that they can be deposited into the applicable Medicare trust fund and thus be used to pay for the care that other beneficiaries may need.

MSP Recovery Process Regarding Roundup Settlements (Updated [publication date])

A large number of Medicare beneficiaries are settling liability claims related to Non-Hodgkin's Lymphoma (NHL) allegedly caused by exposure to Roundup and related products. As Medicare has paid in full or in part for the treatment of the illness, by law Medicare must recover its associated conditional payments. Generally, claimants for Roundup liability settlements related to NHL may resolve Medicare's recovery interests one of two ways: 1. through the standard recovery process, which is administered at the individual beneficiary level through the Centers for Medicare and Medicaid Services' (CMS) MSP recovery contractor, the Benefits Coordination and Recovery Center (BCRC), or 2. "globally" at the group (universe) level between Medicare and lien resolution companies.

In the standard MSP recovery, the BCRC calculates the amount an individual owes to Medicare by reviewing the beneficiary's Part A and Part B paid claims history for care related to the injury being claimed, released, or released in effect in the settlement. Medicare may compromise or waive its recovery claim on a case-by-case basis where appropriate. Please see <https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Coordination-of-Benefits-and-Recovery-Overview/Overview> for a more thorough explanation of this process.

In "global" MSP recovery, Medicare is reimbursed by determining a full MSP global recovery claim (called a "global claim") for a large group of Medicare beneficiaries, which is then paid through one or

¹ For a more detailed explanation of the Medicare Secondary Payer recovery process, please see the "Medicare Secondary Payer Manual." <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS019017>

more entities, or lien resolution companies hired by the beneficiaries' attorneys, that represent these large groups of Medicare beneficiaries. When settlement is reached and proceeds are ready to be distributed, the beneficiaries' attorneys and/or lien resolution companies allocate Medicare's full MSP global recovery claim amongst the beneficiaries, withholding a portion of the overall settlement proceeds to reimburse Medicare.

CMS is using the global recovery process for Roundup claims for those Medicare beneficiaries whose attorneys enter them into the process. Because of the relative amount of the global claim related to the cost of NHL treatment compared to overall settlement proceeds, CMS needs approval from the U.S. Department of Justice (DOJ) regarding the amount, if any, by which CMS may compromise its recovery claim.

CMS will continue to offer a global recovery option for those beneficiaries who settle their claims related to NHL allegedly caused by exposure to Roundup and related products through March 31, 2024. Medicare's claim against settlements relating to NHL allegedly caused by exposure to Roundup and related products that are not reported to CMS for global resolution prior to April 1, 2024, or occur on or after April 1, 2024, must be resolved through the standard MSP recovery process.

CMS has communicated this information to the lien resolution companies, and CMS is keeping them informed of any relevant updates relating to this matter. Beneficiaries should contact their attorney to determine the status of their settlement.

Roundup Global Resolution Frequently Asked Questions

Q: Does Medicare have a "lien" against my Roundup settlement?

A: Pursuant to §1862(b) of the Social Security Act, as codified in 42 U.S.C. § 1395(y)(b), Medicare must be reimbursed for payments it made conditionally when another person or entity was responsible for making that payment. If you have not received letters from the BCRC, your attorney likely enrolled you in the Roundup global resolution. A Medicare "claim" amount on your settlement forms is likely an allocation determined by your attorney and/or the lien resolution company hired by your attorney. If you are participating in the global resolution process then CMS did not determine your allocation amount. Please contact your attorney and/or the applicable lien resolution company to discuss the "claim" amount.

Q: How do I know if Medicare's claim against my Roundup settlement is being resolved through the standard process or through the Roundup global resolution? Is it better to have my Roundup settlement resolved through the standard process with the BCRC or "globally"?

A: Please carefully review all information received from your attorney and contact them with any questions regarding how Medicare's claim is being resolved. The options are a personal decision, and it is best to discuss this with your attorney

Q: I called the BCRC, why do they say they have no record of my Roundup case when I called?

A: Your attorney likely enrolled you in the Roundup global resolution. The BCRC does not have information on the Roundup global resolution because they are responsible for standard MSP recovery only and do not handle the global recovery process. Please contact your attorney and/or the applicable lien resolution company for information on the Roundup global resolution.

Q: When will CMS be able to offer the final terms for the Roundup global recovery claim?

A: DOJ approved CMS's proposed compromises associated with the first large group of settlements. Determinations for subsequent groups of claimants will be communicated out as they occur.

Q: How do I remove myself from the Roundup global resolution and have my settlement resolved through the BCRC?

A: Please coordinate removal from the Roundup global resolution with your attorney and the applicable lien resolution company. You and/or your attorney and/or lien resolution company will need to start a recovery case with the BCRC (please see <https://www.cms.gov/medicare/coordination-of-benefits-and-recovery/coordination-of-benefits-and-recovery-overview/contacts/contacts-page> for how attorneys and beneficiaries may contact the BCRC).

Q: How long will it take to work with the BCRC to resolve Medicare's claim against my Roundup settlement?

A: Medicare's recovery demand letter can be issued within 90 days of your case being established in the standard recovery process. As the standard recovery process affords beneficiaries the opportunity for administrative appeals and to request waiver and compromise of recovery, true resolution in full depends upon whether a beneficiary pursues additional administrative remedies outside of simply paying the full amount owed. Please see <https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Coordination-of-Benefits-and-Recovery-Overview/Reimbursing-Medicare/Reimbursing-Medicare-> for more information on the BCRC recovery process.