



## **Financial Services Group**

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### **Centers for Medicare & Medicaid Services Computation of Annual Recovery Thresholds for Certain Liability Insurance, No-Fault Insurance, and Workers' Compensation Settlements, Judgments, Awards or Other Payments**

#### **BACKGROUND:**

The Medicare Secondary Payer (MSP) provisions of the Social Security Act prohibit 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.

The primary plan, such as liability insurance, no-fault insurance, or workers' compensation, often demonstrates primary payment responsibility through a settlement, judgment, award, or other payment (hereinafter, "settlement"). Accordingly, Medicare is obligated by statute to recover conditional payments it made for medical care related to the settlement. Medicare's recovery is limited to the amount of the settlement less any attorney fees or costs the beneficiary incurred to obtain the settlement.

Medicare beneficiaries, their attorneys, and primary plans report settlements to Medicare. Reporting is required so Medicare is able 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.

Medicare incurs costs to perform these activities. These costs include, for example, compiling related claims, calculating conditional payments, applying reductions, sending demands, and providing customer service. In addition to CMS' costs associated with pursuing recovery, Medicare does not usually recover the full amount of the conditional payments. For example, there may be reductions to the demand to account for procurement costs (attorney fees and costs) or for full or partial waiver of recovery if certain criteria are met. Implementing a threshold facilitates CMS' efficient use of its resources.

To fulfill the requirements of Section 202 of the SMART Act, in 2013, CMS reviewed all of the costs related to collecting data and determining the amount of Medicare's recovery claim. As a result of this analysis, CMS calculated a revised threshold for physical trauma-based liability insurance settlements. Effective January 1, 2014, CMS established a single threshold for these cases, where settlements of \$1000 or less do not need to be reported and Medicare's conditional payment amount related to these cases did not need to be repaid. This threshold was re-evaluated a year later and stayed at \$1000 for 2015. For 2016, CMS has determined that it will maintain the current single threshold for these cases, where settlements of \$1000 or less do not need to be reported and Medicare's conditional payment amount related to these cases does not need to be

repaid.

CMS also evaluated available data related to no-fault insurance and workers' compensation settlements. Based on this data, CMS determined that it will establish a threshold for no-fault insurance and workers compensation settlements. For FY 2016, settlements of \$750 or less for no-fault insurance and workers' compensation will not need to be reported and Medicare's conditional payment amount related to these cases will not need to be repaid.

### **COST OF COLLECTION:**

The CMS estimated the average cost of collection for Non-Group Health Plan (NGHP) cases (which includes liability insurance (including self-insurance), no-fault insurance, and workers' compensation) as approximately \$421 per case. This cost of collection was based on the amount paid (invoices) to our Benefits Coordination and Recovery Contractors for work related to identifying and recovering NGHP conditional payments. CMS relied on data from fiscal year 2015. The total dollar amount paid to CMS' contractors was divided by the number of final NGHP demand letters issued during the aforementioned date range. The average cost of collection per case was calculated to be approximately \$421.

To determine settlement thresholds, CMS compared the estimated cost of collection per NGHP case of approximately \$421 to the average liability insurance demand amount per settlement range. We then did the same comparison of the estimated cost of collection to the average no-fault insurance and workers' compensation demand amounts per settlement range.

### **CONCLUSION:**

Based on this information, CMS determined it should maintain the existing \$1000, so that physical trauma-based liability insurance settlements of \$1000 or less do not need to be reported and Medicare's conditional payment amount for these settlements does not need to be repaid. For liability insurance settlements, the calculated cost of collection most closely aligns with the average demand amount for settlements of \$750 or less. However, CMS will maintain the threshold of \$1000 for physical trauma-based liability insurance settlements because the cost of collection for FY 2015 remains consistent with the cost of collection for FY 2014. While the cost of collection has not changed dramatically, the number of liability insurance cases with settlements of \$1000 or less decreased by almost 30% between FY 2014 and FY 2015. Where parties negotiating settlements recognize that a case may fall under threshold, they do not report them. Therefore, demand data available to compare to cost of collection decreased.

For workers' compensation and no-fault insurance settlements, CMS will establish a threshold of \$750, where the no-fault insurer or workers' compensation entity does not otherwise have ongoing responsibility for medicals. We arrived at this conclusion because the average amount demanded for the highlighted settlement ranges for no-fault insurance and workers' compensation is \$499 and \$516 respectively, are closest to the estimated cost of collection of \$421, where the average amount to be recovered exceeds the cost of collection.