

Medicare Secondary Payer Recovery Updates

Medicare issued an alert on November 9, that the Medicare Secondary Payer Recovery Portal (MSRP) will be modified to include final Conditional Payment functionality by January 1, 2016, as part of the Strengthening Medicare and Repaying Taxpayers Act of 2012 (SMART Act). Once this new functionality is implemented, MSRP users will have the capability of notifying CMS that a recovery case is 120 days (or less) from anticipated settlement and request that the recovery case be brought to the Final Conditional Payment process.

Once the Final Conditional Payment process request has been made, any disputes submitted through the MSRP will be resolved within 11 business days of receipt of the dispute. Once all disputes are resolved and the case is within three days of settling, the beneficiary (or his or her authorized representative) will be able to request a Final Conditional Payment amount on the MSRP. This amount will remain the Final Conditional Payment amount provided the case is settled within three calendar days of requesting the Final Conditional Payment amount and settlement information is submitted via the MSRP within 30 calendar days of the requesting the Final Conditional Payment amount.

Would “settled” in the contexts of Pennsylvania workers’ compensation mean the date of the execution of the settlement documents and hearing to seek approval of the agreement or would it would mean the date of the judge’s decision approving the agreement? Guidelines for the implementation of this policy change have not been issued.

While we often receive a judge’s decision approving the compromise and release agreement within a day or two of the hearing, there are cases in which that does not occur. Common examples would be when the hearing takes place the day before a weekend or holiday. As the policy limits the delay in settlement following the request for the Final Conditional Amount to three calendar days, holidays and weekend days would be counted. Another example in which the three calendar day limit would seem to make it impossible to obtain a Final Conditional Payment amount before the hearing would be in a case in which the hearing is scheduled to occur on a Monday or following a holiday as the request would need to take place several days before the hearing and the decision would likely not be issued until at least one day after the hearing.

Effective October 5, 2015, the Commercial Repayment Center-NGHP has assumed the responsibility for recovery of conditional payments in workers’ compensation claims. However, this only applies to cases in which the CBRC had not initiated recovery (a conditional payment lien investigation) before October 5, 2015. If the claim was already assigned to the CBRC it will remain with it. For all new cases in which a conditional payment lien inquiry is sought, the Responsible Reporting Entity should submit the request for conditional payment information via the Commercial Repayment Center Portal. The Responsible Reporting Entity will then receive the information directly regarding conditional lien payments.

For more information, please contact Renee M. Porada Frazier at rporada@wglaw.com or 412.281.4541.