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Home > Medicare > Attorney Services > Attorney Services

## Attorney Services

By law, 42 U.S.C. §1395y(b)(2) and § 1862(b)(2)(A)/Section and § 1862(b)(2)(A)(ii) of the Social Security Act, Medicare may not pay for a beneficiary's medical expenses when payment "has been made or can reasonably be expected to be made under a workers' compensation plan, an automobile or liability insurance policy or plan (including a self-insured plan), or under no-fault insurance." If responsibility for the medical expenses incurred is in dispute and other insurance will not pay promptly, the provider, physician, or other supplier may bill Medicare as the primary payer. If the item or service is reimbursable under Medicare rules, Medicare may pay conditionally, subject to later recovery if there is a subsequent settlement, judgment, award, or other payment. In situations such as this, the beneficiary may choose to hire an attorney to help them recover damages. Please note that CMS' Medicare Secondary Payer (MSP) recovery claim (under its direct right of recovery as well as its subrogation right) has sometimes been referred to as a Medicare "lien", but the proper term is Medicare or MSP "recovery claim." Pursuant to 42 U.S.C. 1395y(b)(2)(B)(ii)/Section 1862(b)(2)(B)(ii) of the Act and 42 C.F.R. 411.24(e) & (g), CMS may recover from a primary plan or any entity, including a beneficiary, provider, supplier, physician, attorney, state agency or private insurer that has received a primary payment.

If the matter involves a work related injury or illness, the beneficiary may choose to pursue a CMS-approved Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) to establish certainty, with respect to the settlement amount, that must be appropriately exhausted before Medicare begins to pay for care related to the workers' compensation settlement, judgment, award, or other payment. For more information related to WCMSAs, please click the [Workers' Compensation Medicare Set-Aside Arrangements](#) link.

In situations where an attorney has been hired, one of the first steps should be to contact the Benefits Coordination & Recovery Center (BCRC) and report the case. Details regarding what must be reported and contact information for the BCRC are contained on the [Reporting a Case](#) page.

Attorneys representing beneficiaries must send the BCRC proper proof of representation in order for the BCRC to release information. This may be accomplished by sending a copy of the signed and dated retainer agreement with the beneficiary. Please refer to the [Proof of Representation and Consent to Release](#) page for complete information regarding the release of information. For details about an online self-service tool to help manage recovery cases, click the [MSPRP](#) link. The Medicare Secondary Payer Recovery Portal (MSPRP) allows for electronic submission of Proof of Representation and Consent to Release documentation.

### Conditional Payment Information

Once the BCRC is aware of the existence of a case, the BCRC begins identifying payments that Medicare has made conditionally that are related to the case. The BCRC will issue a conditional payment letter with detailed claim information to the beneficiary. This letter does not provide a final conditional payment amount; Medicare might make additional conditional payments while the beneficiary's claim is pending. The BCRC does not issue a formal recovery demand letter until there is a settlement, judgment, award, or other payment. If there is a significant delay between the initial notification to the BCRC and the settlement, judgment, award, or other payment, the beneficiary or his attorney or other representative may request an "interim conditional payment letter" which lists the related claims paid to date. For additional information about conditional payment letters, please go to the [Conditional Payment Information](#) page. Note: If Medicare is pursuing recovery from the insurer/workers' compensation entity, the beneficiary and his attorney or other representative will receive a copy of recovery correspondence sent to the insurer/workers' compensation entity. The beneficiary does not need to take any action on this correspondence. For more information on insurer recovery, click the [Insurer NGHP Recovery](#) link.

The MSPRP may also be used to obtain conditional payment information, including requesting a final conditional payment amount for a case that is approaching settlement. For additional information about how to request a final conditional payment amount, click the [Demand Calculation Options](#) link.

### Reimbursing Medicare

When a case settles or there is a judgment, award, or other payment, the BCRC issues a formal demand letter advising the beneficiary and his attorney or other representative of its primary payment responsibility. This letter includes: 1) a summary of conditional payments made by Medicare; 2) the total demand amount; 3) information on applicable waiver and administrative appeal rights. For additional information about the demand process and repaying Medicare, please click the [Reimbursing Medicare](#) link.

#### Downloads