

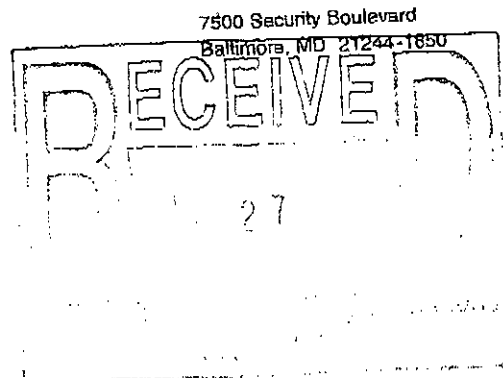


## DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Centers for Medicare &amp; Medicaid Services

FEB 12 2002

Skip N. Cressman  
Medi-Bill  
P.O. Box 30725  
Walnut Creek, California 94598-9725



Dear Mr. Cressman:

Thank you for your inquiry to the Centers for Medicare & Medicaid Services (CMS) Regional Offices (RO) regarding the proper administration procedures for Medicare set-aside agreements/allocations. I am the director of the division in CMS's Central Office that is responsible for Workers' Compensation policy, and I am responding on behalf of all the ROs to which you sent your letter.

With respect to your first issue concerning the CMS approval letter, page 8 of the July 23, 2001 memorandum to All Associate Regional Administrators (attached) clearly states that-

" Until the individual actually becomes entitled to Medicare, the set-aside arrangement fund must **not** be used to pay the individual's expenses. That is, an individual's medical expenses must be paid from some other source besides the set-aside arrangement when the individual is not a Medicare beneficiary. Once the individual actually becomes entitled to Medicare, then the administrator of the arrangement is permitted to make payments for the individual's medical care (for Medicare-covered services only) from the arrangement."

Therefore, we believe that there is no ambiguity with respect to when Medi-Bill or any other administrator should begin paying benefits out of the injured individual's Medicare set-aside arrangement funds. If the Medicare enrollment date is known at the time when the RO issues its written opinion on whether the WC settlement has adequately considered Medicare's interests, then the ROs will include that date in their letters to the parties settling the Workers' Compensation (WC) cases. However, if the Medicare enrollment date is unknown at the time the RO releases its letters, then it is the responsibility of the arrangement administrator to not make any payments from the Medicare set-aside arrangement until the individual actually becomes entitled to Medicare. That is, it is the responsibility of the arrangement administrator to find out when the injured individual actually becomes entitled to Medicare.

With respect to your second issue concerning whether fees can be charged to the set-aside arrangement prior to Medicare enrollment, if the RO is notified (in writing) of proposed fees before the RO actually provides its written opinion on the WC settlement, then those fees may be charged to the set-aside arrangement (assuming, of course, that the fees are reasonable). However, if the RO is not notified (in writing) of proposed fees prior to the

Page 2 - Cressman

time that the RO actually provides its written opinion, then those unreported fees cannot be charged to the Medicare set-aside arrangement. Therefore, a Medicare set-aside arrangement may be charged administrator fees prior to the beneficiary's actual enrollment in Medicare if the RO was notified in writing of those proposed fees and approved those fees.

With respect to your third issue concerning taxes paid from the set-aside arrangement prior to the beneficiary's enrollment in Medicare, we are not certain if the income/interest generated from the Medicare set-aside arrangement is (in fact) taxable. Therefore, before we respond to your third issue we must ascertain from the Internal Revenue Service (IRS) whether the income/interest generated from the Medicare set-aside arrangement is (in fact) taxable. Once we receive a response from the IRS, we will respond to your third issue.

We hope this information is of assistance to you. If you have any questions, you may contact Fred Crabau at 410-786-0206.

Sincerely,



Paul J. Olenick

Director

Division of Integrated Delivery Systems  
Purchasing Policy Group  
Center for Medicare Management

Attachment

cc: All Medicare ARAs

Department of Health & Human Services  
Centers for Medicare & Medicaid Services  
61 Forsyth St., Suite. 4T20  
Atlanta, Georgia 30303-8909



November 30, 2001

*acknowledge*

Mr. Michael G. Dileo  
Louisiana Workers' Compensation Corporation  
2237 S. Acadian Thruway  
Baton Rouge, LA 70808

Dear Mr. Dileo:

This is in response to your letter dated September 27, 2001 regarding our workers' compensation procedures. We are providing answers to the questions in your letter in the same order as the questions were presented.

Question 1:

What is the definition of a beneficiary? Where is your definition defined in the statutory law, regulations or federal case law?

Answer:

Beneficiary means a person who is entitled to benefits under part A of the Medicare Act or enrolled in part B. 42 U.S.C. § 1395a(b)(5)(A); 42 C.F.R. § 400.202.

Question 2:

What is "a reasonable expectation" of Medicare enrollment? Does it include an injured worker who has (1) applied for Social Security (SS) Disability Benefits; (2) whose disability claim has been denied; but (3) is awaiting an appeal and/or re-filing?

Answer:

The regulations at 42 C.F.R. § 406.6 set out the methods by which an individual becomes enrolled in Medicare. A "reasonable expectation" of Medicare enrollment is not an extreme, immoderate, or excessive chance that the injured individual will become enrolled in Medicare. A "reasonable expectation" of Medicare enrollment may include an injured worker, who has applied for SS Disability Benefits, whose disability claim has been denied, and is awaiting an appeal or re-filing.

Page 2

Question 3:

What statutory law, regulations, or federal case law supports/allows CMS to include for consideration, those injured workers who are not Medicare beneficiaries, but have a reasonable expectation of Medicare enrollment within 30-months of the settlement date and a total settlement amount of greater than \$250,000?

Answer:

Section 1862(b)(2) of the Social Security Act ("the Act") requires that Medicare payment may not be made for any item or service to the extent that payment has been made under a workers' compensation law or plan. 42 U.S.C. § 1395y(b)(2). Moreover, 42 C.F.R. § 411.46 requires Medicare to exclude its payments when an individual receives a workers' compensation ("WC") settlement award that is intended to compensate the individual for future medical expenses required because of a work-related injury or disease. That is, Medicare must not pay for an individual's medical services when that individual received a WC settlement award that includes funds for future medical expenses. Section 1862(b)(2) of the Act and 42 CFR 411.46 do not explicitly require individuals who are not yet Medicare beneficiaries to consult with CMS prior to settling their WC cases. However, once an individual becomes a Medicare beneficiary, section 1862(b)(2) of the Act and 42 CFR 411.46 prohibit CMS from paying for items and services where a primary payment is available to pay. Therefore, at the time of settlement, it may be appropriate to consider whether the individual may become a Medicare beneficiary in the near future. That is why we recommend that individuals who are within 30-months of Medicare enrollment and possess a settlement with future payments greater than \$250,000 consider Medicare's obligation to exclude payments once the individual becomes a Medicare beneficiary.

Question 4:

Assuming an injured worker is not a Medicare beneficiary at the time of settlement, if in the future the injured worker requests Medicare benefits, will Medicare provide the benefits? If so, is it Medicare's position that Medicare can recoup these payments from the workers' compensation insurer? If so, what statutory law, regulations, or federal case law supports Medicare's right to recoup these payments from the WC insurer? Isn't it true that as long as the Medicare beneficiary and the WC carrier reasonably considers Medicare's interests when settling the case, the law does not require the parties to establish a set-aside arrangement or to obtain Medicare's approval of the settlement or set-aside amount?

Answer:

If an injured worker who is not a Medicare beneficiary at the time of settlement meets the review thresholds (i.e., the 30-month and \$250,000 figures) and fails to consider Medicare's interests, then Medicare may preclude its payments pursuant to 42 C.F.R. § 411.46 once the injured individual actually becomes a Medicare beneficiary. Medicare must not pay for an individual's medical services

Page 3

when that individual received a WC settlement award that includes funds for future medical expenses. If Medicare's interests are not reasonably considered, Medicare may refuse to pay for services related to the WC injury that otherwise would be covered by Medicare until such time that the medical expenses related to the WC injury equal the amount of the entire WC settlement (not simply the supposed future medical expenses portion of the settlement). CMS has a direct right of action to recover from any entity responsible for making primary payment. This includes an employer, an insurance carrier, plan, or program, and a third party administrator. CMS is subrogated to any right of an individual or any other entity to payment made under an insurance plan or policy. Refer to 42 U.S.C. Section 1395y(b)(2)(B)(iii). CMS has a direct right of action and may collect double damages against a third party insurance policy or plan that fails to provide primary payment. See 42 U.S.C. Section 1395y(b) and 42 CFR Section 411.24(e).

Question 5:

How long should it normally take to receive a response from your office regarding confirmation of Medicare eligibility?

Answer:

The WC carrier or the claimant's representative is responsible for determining if the claimant is entitled to Medicare. In those rare instances where the Medicare eligibility status cannot be obtained such information will be provided by the Centers for Medicare & Medicaid ("CMS") if CMS has a signed, written authorization from the claimant (or his/her representative) to release the information to you. The WC carrier can expect an entitlement status within a two week period from the receipt of your inquiry.

Question 6:

How long should it normally take to receive a response from your office regarding confirmation of the Medicare claim amount required to be set aside in the workers' compensation claim settlement?

Answer:

We are unable to provide you with a specific time frame for processing the Medicare set-aside arrangements. We can assure you that we will put every effort in processing these cases as soon as possible. To assist us in expediting these requests, we are requesting that the information included in the enclosure be present with each case. It is imperative that this office receive a copy of the signed authorization from the claimant to release this information to you.

Page 4

We appreciate the opportunity to respond to your questions. We hope that this information has further clarified our procedures applicable to WC requests. If we can be of further assistance, please do not hesitate to contact Edith Davis at (404) 562-7314 or myself at (404) 562-7303.

Sincerely,

/s/

Jimmy G. Brown, Chief  
Program Integrity Branch  
Division of Financial Management  
and Program Initiatives

Enclosure

cc: Christine Bradfield, Office of the General Council  
Barbara Smith, TriSpan Health Services

Janita Dixon - Re: Fwd: \$250,000/30 month requirement

QVA

**From:** Frederick Grabau  
**To:** Davis, Edith  
**Date:** Fri, Jan 25, 2002 7:50 AM  
**Subject:** Re: Fwd: \$250,000/30 month requirement

Edith,

Here is the response to Mr. Dileo's questions--

1.) Does the figure of \$250,000 apply to the total amount of the settlement?

Yes. Medicare's interests must be considered when the injured individual has a "reasonable expectation" of Medicare enrollment within 30 months of the settlement date, and 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.

2.) Should this figure be used based on its present value? For example, should we consider Medicare's interests only on cases with a present value of \$250,000, or if \$250,000 or more is the total amount of anticipated future medical payments. We may estimate future payment exposure on a claim of \$250,000 but settle it at a present value amount of \$100,000. Are you recommending that we consider Medicare's interests on a settlement of this nature?

If an injured individual (who is not yet a Medicare beneficiary) is paid a **total** settlement of \$100,000, then Medicare's interests do not need to be considered. However, if the injured individual (who is not yet a Medicare beneficiary) receives an initial payment of \$100,000 at the time of settlement and receives additional payments (e.g., \$10,000 each year for the next 16 years), then Medicare's interests must be considered in that case. (Assuming of course that the injured individual also has a "reasonable expectation" of Medicare enrollment within 30 months of the settlement date.) Because the injured individual will have received a total settlement of \$250,000 or more [ $\$100,000 + (16 \times \$10,000) = \$260,000$ ].

>>> Edith Davis 01/23/02 02:28PM >>>

In order to maintain consistency among the ROs, we are requesting that CO provide us with a response to the questions in the attached document from Louisiana Workers' Compensation Corporation. Thank you.

**CC:** Brown, Jimmy; Dixon, Juanita; Eve Fisher; Flanagan, Emily; Olenick, Paul; Pierson, Michael; Taylor, Geraldine

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Suite 216, The Public Ledger Building  
150 S. Independence Mall, West  
Philadelphia, PA 19106-3499



MAY 8 2002

*Handwritten notes:*  
N...  
10/10/02

[REDACTED]

Dear [REDACTED]

This letter is in reference to the workers' compensation Medicare set-aside arrangement proposal submitted on behalf of [REDACTED], for the injuries sustained on August 13, 1999.

You indicated that a \$25,000.00 settlement has been offered in this case. The case documentation provided indicates that [REDACTED] treatment related to the work injury during the remaining 27.7 years of her life expectancy may require physical therapy. While total knee replacement has been recommended for the future, the need for surgery results from both a prior automobile accident in addition to the work-related injury. You have proposed that \$5000.00 be placed in a Medicare set-aside arrangement for future Medicare-covered services related to the work injury

We have evaluated your proposal and have determined that Medicare's interests have been adequately considered by virtue of the proposed arrangement described above. Therefore, the proposed allocation for treatment of [REDACTED] future work-related injuries is approved. Please advise us when you determine the hearing date, and provide us with a copy of the workers' compensation award once the case has settled.

In accordance with Medicare set-aside arrangement provisions, set-aside funds are to be used for primary or secondary, when applicable, payment of services for work-related injuries that are covered by Medicare. Accordingly, Medicare payments for services related to the workers' compensation injuries are excluded until the set-aside account has been exhausted and a full accounting of its exhaustion has been provided. For your information, the funds in a Medicare set-aside arrangement may not be used to purchase a Medicare Supplemental Insurance (e.g., Medigap) policy for a beneficiary, or to pay for the premiums of such a policy. A Medicare Supplement is designed to pay for expenses not reimbursable by Medicare, such as deductible and coinsurance amounts or services not covered by Medicare. A Medicare set-aside arrangement, on the other hand, is intended to pay for medical services that would otherwise be covered by Medicare.

Page 2 - - [REDACTED]

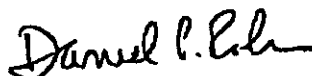
The set-aside funds must be placed in an interest-bearing account. Funds in the account should not be used for any purpose other than payment of services related to the work injury that would normally be paid by Medicare. You have indicated that the trust will be self-administered. The Administrator of the account will be responsible for keeping records of payments made from the account and providing annual accounting summaries of fund transactions along with the status of the account to the following Medicare contractor:

Attention: MSP - Medicare, 8<sup>th</sup> Floor  
Mutual of Omaha  
Medicare/P.O. Box 1602  
Omaha, NE 68101

Please note that termination of a beneficiary's Medicare entitlement for the duration of the arrangement is not necessary. A Medicare arrangement is considered to be simply a workers' compensation compromise settlement, and not a private contract between the beneficiary and any medical providers/suppliers. Please refer to 42 C.F.R. 411.31, which states that "...a medical provider or supplier may bill its full charges and expect those charges to be paid, unless there are limits imposed by laws other than the federal Medicare statute or by agreements with the third party payer. . . ."

If you have any questions regarding this letter, please contact Lawrence Chosod of my staff at (215) 861-4198.

Sincerely,



Charlotte G. Foster  
Chief  
Financial Management Branch  
Division of Financial Management

cc: [REDACTED]  
Mutual Of Omaha

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Suite 216, The Public Ledger Building  
150 S. Independence Mall, West  
Philadelphia, PA 19106-3499



MAY 2 2002

Refer to: R3-DFM(27)  
File Code: 804.2

Gregory O. Harbison, Esquire  
Geoffrey R. McDonald & Associates, P.C.  
3401 Cutshaw Avenue  
Richmond, Virginia 23230

*The "Do not go to Jail letter"*

RECEIVED  
MAY 05 2002

Dear Mr. Harbison:

This letter is in reference to the workers' compensation Medicare set-aside arrangement proposal submitted on behalf of [REDACTED] for the injuries sustained on August 13, 1999.

You indicated that a \$25,000.00 settlement has been offered in this case. The case documentation provided indicates that [REDACTED] treatment related to the work injury during the remaining 27.7 years of her life expectancy may require physical therapy. While total knee replacement has been recommended for the future, the need for surgery results from both a prior automobile accident in addition to the work-related injury. You have proposed that \$5000.00 be placed in a Medicare set-aside arrangement for future Medicare-covered services related to the work injury

We have evaluated your proposal and have determined that Medicare's interests have been adequately considered by virtue of the proposed arrangement described above. Therefore, the proposed allocation for treatment of [REDACTED] future work-related injuries is approved. Please advise us when you determine the hearing date, and provide us with a copy of the workers' compensation award once the case has settled.

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Page 2 - - Gregory O. Harbison

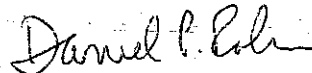
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Mutual of Omaha  
Medicare/P.O. Box 1602  
Omaha, NE 68101

Please note that termination of a beneficiary's Medicare entitlement for the duration of the arrangement is not necessary. A Medicare arrangement is considered to be simply a workers' compensation compromise settlement, and not a private contract between the beneficiary and any medical providers/suppliers. Please refer to 42 C.F.R. 411.31, which states that ". . . a medical provider or supplier may bill its full charges and expect those charges to be paid, unless there are limits imposed by laws other than the federal Medicare statute or by agreements with the third party payer. . . ."

If you have any questions regarding this letter, please contact Lawrence Chosed of my staff at (215) 861-4198.

Sincerely,



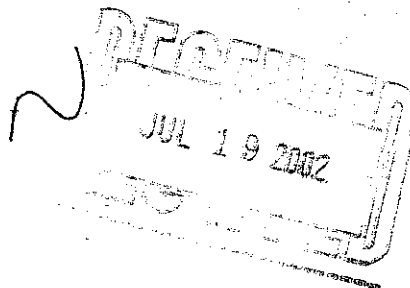
Charlotte G. Foster  
Chief  
Financial Management Branch  
Division of Financial Management

cc:   
Mutual Of Omaha

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Suite 216, The Public Ledger Building  
150 S. Independence Mall, West  
Philadelphia, PA 19106-3499



JUL 17 2002  
Refer to: R3-DFM(19)  
File Code: 804.2



Gregory O. Harbison, Esquire  
Geoffrey R. McDonald & Associates, PC  
3401 Cutshaw Avenue  
Richmond, Virginia 23230

Dear Mr. Harbison:

This letter is in reference to the workers' compensation Medicare set-aside arrangement regarding [REDACTED] which has previously been approved.

Please provide our office with the effective date of the final settlement and a copy of the final agreement. If this information is not provided in a timely fashion, the Medicare set-aside arrangement will be considered to be in effect six months after the date of our approval letter. This will be in addition to any extended period for which the workers' compensation carrier was to remain responsible for work-related medical treatment as part of the settlement agreement, if applicable. Medicare will not be responsible for paying for injury-related medical services nor will the payment of such services be applied to the Medicare set-aside arrangement during this period.

Your timely cooperation in this matter is appreciated. If you have any questions regarding this letter, please contact me at (215) 861-4763.

Sincerely,

Joanna Aranda  
Health Insurance Specialist  
Financial Management Branch  
Division of Financial Management

cc: [REDACTED]

+DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Suite 216, The Public Ledger Building  
150 S. Independence Mall, West  
Philadelphia, PA 19106-3499



JUL 19 2002  
Refer To: R3(DFM)27  
File Code: 804.2

Gregory O. Harbison, Esquire  
Geoffrey R. McDonald & Associates, P.C.  
3401 Cutshaw Avenue  
Richmond, Virginia 23230

RESERVED  
N

Dear Mr. Harbison:

This letter is in reference to the workers' compensation proposal submitted on behalf of [REDACTED] C [REDACTED] for the injury sustained on January 8, 2001.

Based on the information provided, a total settlement of \$3,500.00 has been offered in this case. The case documentation provided indicates that the work-related injury sustained by Ms. Cooper has been resolved. Based on the information provided, we have determined that no Medicare set-aside arrangement is required in this case. Please provide our office with a copy of the final settlement.

Please note that the decision regarding future medical treatment is independent of any injury-related medical claims that Medicare may have paid in the past. Should any such claims be identified in the future, you will be notified by the lead Medicare contractor in this case, and reimbursement to Medicare will be required by the entity responsible for payment during corresponding the time period. For your information in the future, the Coordination of Benefits Contractor (COBC) should be notified of workers' compensation cases involving current Medicare beneficiaries as soon as you become aware of such a situation. For the coordination of any past claims of Medicare beneficiaries in future cases, please call the following toll-free number: 1-800-999-1118.

If you have any questions regarding this letter, please Lawrence Chosed of my staff at (215) 861-4198.

Sincerely,

Charlotte G. Foster  
Chief  
Financial Management Branch  
Division of Financial Management

cc: [REDACTED]  
Mutual of Omaha