

DATE: MAY 23, 2003

TO: All Regional Administrators

**FROM: Director
Center for Medicare Management**

SUBJECT: Medicare Secondary Payer -- Workers' Compensation (WC) Additional Frequently Asked Questions

Questions raised are paraphrased below. This memorandum will be posted on the Centers for Medicare & Medicaid Services' (CMS) website.

- 1.) What are the review thresholds set by the July 23, 2001 All Associate Regional Administrators (ARA) letter concerning WC Commutation of Future Benefits?

Answer: They state that to the extent a WC settlement meets both of the criteria (i.e., the settlement is greater than \$250,000 AND the claimant is reasonably expected to become a Medicare beneficiary within 30 months of the settlement date), then a CMS-approved Medicare set-aside arrangement is appropriate. However, if a WC settlement is \$250,000 or less OR where the claimant of that settlement is not reasonably expected to become a Medicare beneficiary within 30 months of the settlement date, then a CMS-approved Medicare set-aside arrangement is unnecessary.

Additional Information: Please note that the current review thresholds are subject to adjustment. The CMS reserves the right to modify or eliminate its review criteria if it determines that Medicare's interests are not being protected.

- 2.) When an injured individual's WC settlement does not meet the current review thresholds, will the Regional Offices (RO) provide the settling parties with "verification" letters confirming that approval of a Medicare set-aside arrangement is unnecessary?

Answer: No, the ROs will not provide "verification" letters. However, the CMS will honor threshold levels that are in effect as of the date of a WC settlement. (See the July 23, 2001 ARA letter concerning WC Commutation of Future Benefits.)

- 3.) An injured individual, who does not have a "reasonable expectation" of Medicare enrollment within 30 months of the settlement date, settles his/her WC case for less than \$250,000. Once this individual becomes a Medicare beneficiary, will CMS pay for services that are otherwise reimbursable under Medicare, that are related to the WC injury, even though funds still remain in the individual's settlement?

Answer: Yes. When an individual's settlement does not meet both thresholds Medicare will make payment for WC related services that are otherwise reimbursable under Medicare once the individual enrolls in Medicare.

NOTE: THE ABOVE ANSWER WAS REPLACED BY QUESTION 3 OF THE JULY 11, 2005 ARA MEMORANDUM

Additional Information: The CMS assumes that when a non-Medicare eligible claimant's WC settlement does not meet the 30-month and \$250,000 thresholds, typically that individual will completely exhaust his/her settlement by the time Medicare eligibility is reached. Also, according to various members of the WC community, most settlements for these individuals are in the range of \$10,000 to \$50,000. Therefore, the amount of money in the settlement that is actually being provided for an individual's medical care normally will be appropriately exhausted before the individual becomes a Medicare beneficiary.

Please note that the current review thresholds (see the July 23, 2001 ARA letter concerning WC Commutation of Future Benefits) are subject to adjustment. The CMS reserves the right to modify or eliminate its review criteria if it determines that Medicare's interests are not being protected.

- 4.) Will CMS treat WC cases that were settled prior to the issuance of the July 23, 2001 ARA letter concerning WC Commutation of Future Benefits in the same manner as those settled after the review threshold guidelines were established?

Answer: Yes. For WC settlements that do not meet the review thresholds, Medicare will make payment for WC related services that are otherwise reimbursable under Medicare, once the individual becomes enrolled in Medicare. This will be done regardless of when the settlement actually occurred. However, a reopening of claims (see 42 C.F.R. 405.750 and 405.841) that Medicare previously denied for these individuals will not be granted, nor will the CMS change any decisions already made with respect to settlements which pre-date July 23, 2001.

Additional Information: When the CMS issued the July 23, 2001 ARA letter, it established review thresholds for WC cases settled by injured individuals who are not yet Medicare beneficiaries. This was done in order to organize and prioritize workloads for its ROs and to convey to its ROs that it is not in Medicare's best interests to review WC settlements that do not meet the review thresholds.

All RO questions on the issues addressed in these "questions and answers" should be directed to Fred Grabau at (410) 786-0206.

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