

Medicare Conditional Payment Services

You have requested my office be engaged to investigate and/or reconcile Medicare conditional payment information. Below you will find a general overview of what you can expect, my fee schedule, instructions and appropriate authorizations your client will have to sign and return to my office to commence the investigation and or reconciliation.

I recommend that the Medicare conditional payment reconciliation process commence well before settlement discussions are concluded or well in advance of trial as these can be complicated procedures and a settlement could be delayed as a result. My goal in every situation is to keep the amount of the Medicare conditional payment repayment obligation as low as possible, so that the maximum recovery remains with your client.

General Process: What to Expect

The Medicare Secondary Payer Act (MSP) gives rise to Medicare conditional payments. The MSP is found at Section 1862(b) of the Social Security Act 42 USC 1395y(b). Applicable regulations are found at 42 CFR Part 411(1990) et seq. The MSP provides that Medicare may not make payment on behalf of a beneficiary for medical services or prescription drug therapy charges where payment has been made or can reasonably be expected to be made under a workers' compensation law or plan of the United States or a State or under a liability policy or automobile no-fault coverage or group health policy. Under this authority Medicare has a priority right of recovery from the primary payer, as well as, from parties in receipt of third-party payments such as a beneficiary, provider, supplier, physician, attorney, state agency or private insurer pursuant to 42 CFR 411.25(g).

The investigation of Medicare Conditional Payments follows a prescribed series of steps. Notifying the Coordination of Benefits Contractor (COBC) and requesting a file be opened is the first step. The “*Consent to Release*” authorization is required to be signed by the Medicare beneficiary and returned to my office. **If reconciliation of the Medicare conditional payments is requested then in addition to the Consent To Release form the "*Proof of Representation*" authorization must be signed by the Medicare beneficiary and returned to my office.** Link to these forms are shown below and are described below.

Upon receipt of the request the COBC will reference it to the Claimant's Medicare record and assign the case to a Medicare contractor (MSPRC) which will begin the process of assembling interim conditional payments, and release of a "*Rights and Responsibility Letter*" to the Medicare beneficiary and any authorized individual's listed on the Proof of Representation authorization. This letter provides general information on Medicare's rights, as well as, Beneficiary and representative responsibilities. It does not, however, provide any actual conditional payment information.

The MSPRC will then issue conditional payment information concerning interim conditional payment amounts automatically as soon as an interim conditional payment amount is available. Once all claims have been retrieved from the Medicare systems and determined, at least in the opinion of the MSPRC, to be related to the reported claim the MSPRC will issue one or more *Conditional Payment Letters* or "CPL". Note, if Medicare has been notified that a settlement, judgment of this claim has been reached *Conditional Payment Notice* or "CPN" is issued in lieu of the CPL(see further discussion on CPN below). The MSPRC will issue one or a series of these CPLs providing the details of conditional payments developed. The Claimant and any authorized individuals will receive this letter's within 65 days of the issuance of the Rights and Responsibilities Letter.

THE CPL IS ADVISORY ONLY AND IS SUBJECT TO CHANGE AS THE MSPRC CONTINUES TO INVESTIGATE THE CONDITIONAL PAYMENTS.

If the Medicare beneficiary has registered under <http://www.mymedicare.gov> you may monitor the process. It is necessary that the Medicare beneficiary provide his or her password in order to enter the system. Once the CPLs are issued reconciliation of any disputed entries found on the interim CPL's may commence. This is an ongoing process and depending on the degree of dispute as to disputed entries may take a period of time to resolve.

Updated CPL amounts are generally not available until at least 90 days after the initial CPL is issued. CMS' systems retrieve additional paid claims for each established case once every 90 days. The updated CPL information will appear automatically on the beneficiary's "mymedicare.gov" account. However, any final settlement, judgment, award or other payment that is reached should be reported as soon as possible so that the MSPRC can take steps to expedite a final demand letter.

Once the settlement has been finalized the "*Final Settlement Detail Document*" needs to be completed and sent to the MSPRC. This document includes the total settlement amount, itemization of procurement costs including attorney fees and costs, and date of settlement.

ONLY AFTER THE SETTLEMENT HAS BEEN APPROVED OR A JUDGMENT ENTERED AND THE "FINAL SETTLEMENT DETAIL DOCUMENT" IS RECEIVED BY THE MSPRC WILL MSPRC FINALIZE ITS RECOVERY CLAIM.

This means you must advise your client that you will not be able to guarantee what the FINAL Medicare conditional payment recovery amount will be at the time of settlement. Upon receipt of the Final Settlement Detail Document MSPRC will send the practitioner a Final Demand Letter indicating the amount of recoupment MSPRC is seeking from the settlement. Interest begins to accrue on this amount 60 days after issuance of the Final Demand Letter regardless of whether the practitioner is disputing or has filed an appeal to the amount claimed. Appeals follow the normal adjudicatory Medicare appeals process.

Conditional Payment Notice "CPN"

What happens if MSPRC receives notification via the MMSEA Section 111 reporting process that a Settlement, judgment, award or other payment has already occurred? In this situation a "Conditional Payment Notice" or "CPN" is issued in lieu of the CPL. The CPN provides conditional payment information AND advises the beneficiary what action must be taken. The

CPN is issued because the MSPRC has been notified of a settlement, judgment, award or other payment thru the MMSEA Section 111 reporting process rather than from the beneficiary or beneficiary's representative.

The CPN allows for review of the conditional payment information in a similar vein as with the CPL. However, unlike a CPL, if there is a claim payment on the CPN not related to the case being reported normal dispute proceedings within a condensed timeframe are to be followed. MSPRC will allow up to 30 days for a response to a CPN and the response must include the following information (unless already submitted);

1. All proof of representation documents
2. Proof of any items and/or services that are not related to the reported claim
3. All settlement documentation
4. Itemization of any procurement costs and fees paid by the beneficiary
5. Documentation of any additional or pending settlement, judgment, award or other payment related to the same incident

Note that like a CPL, conditional payments may increase after the issuance of a CPN if Medicare paid for additional items and or services related to the claim.

If a response is received within the 30 day window the MSPRC will review it and issue a Final Demand Letter. If a response is not received within the 30 day window MSPRC will issue a Final Demand Letter requesting repayment of all conditional payments related to the reported case without proportionate reduction for procurement fees or costs.

What is the "Proof of Representation form"?

This is the form wherein the Medicare beneficiary has authorized someone else to act on his or her ***BUT ONLY WITH RESPECT TO OBTAINING MEDICARE CONDITIONAL PAYMENT INFORMATION AND/OR RECONCILIATION OF CONDITIONAL PAYMENTS***. The designated individual may receive or submit information/requests on behalf of the Medicare beneficiary, including responding to requests from the MSPRC, receiving a copy of the recovery demand letter if Medicare has a recovery claim, and negotiation the final repayment amount.

What is the "Consent To Release Form"?

This is the form wherein the Medicare beneficiary authorizes someone else to receive certain information from the MSPRC for a designated period of time. This release does not give the designated individual the authority to act on behalf of the Medicare beneficiary and therefore cannot negotiate or reconcile CPL amounts.

What is the "Final Demand Settlement Document"?

This form is completed **ONLY** after the settlement or judgment has been approved or entered. It provides the total amount of the settlement or judgment, procurement fees and costs, any medical payments or PIP benefits paid in addition to the liability settlement amount, as well as, the actual date of

settlement. Once this form is received by the MSPRC a Final Demand Letter will be issued by the MSPRC.

To request service please complete and return the following:

1. [Medicare Conditional Payment Request](#)
2. [Specific Case Information](#) form. Please provide as much information as possible as to which body parts/systems are related to the accident or injury
3. [Proof of Representation](#) form if notice, review and reconciliation of the CPL/CPN is being requested.
4. [Consent to Release](#) form if *only* notice and receipt of CPL is being requested (no reconciliation).
5. [Final Settlement Detail Document](#) (only if case has settled)
6. Provide a copy of your client's Medicare Card
7. If applicable provide the Medicare beneficiary's password for the "myMedicare.gov" account