

PA Federation of Injured Workers

Worker's Compensation Settlements and Medicare



U.S. Department of Health & Human Services » www.hhs.gov



The Center for Medicare and Medicaid Services (CMS), a Federal Agency that is responsible for administering the Medicare and Medicaid Act, indicates that they have authority to ask an individual settling their Workers Compensation case to get the settlement approved by CMS. This is because under the Social Security Act, Medicare does not have to pay for medical services for a work related injury until any funds received in settlement for the same are properly spent. In other words if the settlement is not approved, Medicare can refuse to pay medical bills related to the settlement until all monies are spent. In certain instances they can even claim that the entire amount of the settlement be used before they will pay the medical expenses. http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std_adp.php?

For example, if an injured worker is settling his/her worker's compensation claim such that no more weekly benefits or medical benefits related to the work injury are to be paid by the worker's compensation insurance carrier/self-insured employer in the future, it is possible that there are unforeseen complications and once more treatment is needed for the work injury after settlement. In such a situation, the injured worker is responsible for the payment of those expenses even if they are Medicare recipients. However, if prior to settling the case a proposal is presented to CMS regarding what future medical expenses are foreseen and what money is being set aside for the same; and the proposal is approved by Medicare. This can provide a safety net to the injured worker and insure that any unforeseen medical expenses related to the work related injury in the future are paid for by Medicare. The downside is that this process of approval can take more than six months and Medicare can dictate how much money is to be put aside for future medical expenses related to the work injury. This can make the process of settling a worker's compensation claim that much more difficult and presents an unknown that can grind to a halt all negotiations regarding settlement.

Q. Does everyone need to get approval from CMS before settling a worker's compensation claim?

A. The simple answer to that is NO.

The following conditions have to be met before approval should be obtained:

- If you are a Medicare beneficiary before settling your workers compensation claim you have to write to CMS for the approval of the amount that is being set aside for medical expenses.
- If you are not a Medicare beneficiary at the time of settlement you need approval only if you are going to be eligible for Medicare in the next 30 months AND the settlement amount is more than \$250,000.00.

Please note that these are the broad rules. It is in your best interest to seek legal advice when settling your workers compensation claim because of the finality of worker's compensation settlements.

What happens if you settle your workers compensation claim without CMS approval when you meet the above requirements?

If you need medical treatment for your work related injury after the settlement, Medicare will not pay for the same until you can prove that all of the settlement monies have been exhausted in paying medical expenses related to the work injury. This could also include attorney fees and expenses. If Medicare has paid for any treatment related to your work related injury you could be required to reimburse the amount.