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Medicare Secondary Payer (MSP) Obligations and Settlements Related to Alleged Exposure to Roundup

Background

Applicable Medicare law provides that liability insurance (including self-insurance), no-fault insurance, and workers' compensation are responsible for the cost of medical items and services provided to Medicare beneficiaries. This applies when a beneficiary receives care even if the original underlying incident or exposure occurred before the individual became eligible for or entitled to Medicare (as long as it occurred on or after December 5, 1980). To ensure access to care, a beneficiary's doctor or other providers may bill Medicare if the insurance company or other party responsible for paying primary does not pay the claim promptly (usually within 120 days), and Medicare may make a conditional payment to pay the bill. These payments are "conditional" because if the beneficiary receives a settlement, judgment, award, or other payment that compensates for medical care, Medicare is entitled to be repaid for the items and services it paid.¹ Medicare law requires that Medicare recover these payments so that they can be deposited into the applicable Medicare trust fund and thus be used to pay for the care that other beneficiaries may need.

MSP Recovery Process Regarding Roundup Settlements

Some Medicare beneficiaries are settling liability claims related to Non-Hodgkin's Lymphoma (NHL) allegedly caused by exposure to Roundup and related products. As Medicare has paid in full or in part for the treatment of the illness, by law Medicare must recover its associated conditional payments. Generally, claimants for Roundup liability settlements related to NHL may resolve Medicare's recovery interests one of two ways: 1) through the standard recovery process, which is administered at the individual beneficiary level through the Centers for Medicare and Medicaid Services' (CMS) MSP recovery contractor, the Benefits Coordination and Recovery Center (BCRC), or 2) "globally" at the group (universe) level between Medicare and lien resolution companies.

In the standard MSP recovery process, the BCRC calculates the amount an individual owes to Medicare by reviewing the beneficiary's Part A and Part B paid claims history for care related to the injury being claimed, released, or released in effect in the settlement. Medicare may compromise or waive its recovery claim on a case-by-case basis where appropriate. Please see <https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Coordination-of-Benefits-and-Recovery-Overview/Overview> for a more thorough explanation of this process.

In "global" MSP recovery, Medicare is reimbursed by determining a full MSP global recovery claim (called a "global claim") for a large group of Medicare beneficiaries, which is then paid through one or more entities, or lien resolution companies hired by the beneficiaries' attorneys, that represent these large groups

¹ For a more detailed explanation of the Medicare Secondary Payer recovery process, please see the "Medicare Secondary Payer Manual." <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS019017>.

of Medicare beneficiaries. When settlement is reached and proceeds are ready to be distributed, the beneficiaries' attorneys and/or lien resolution companies allocate Medicare's full MSP global recovery claim amount amongst the beneficiaries, withholding a portion of the overall settlement proceeds to reimburse Medicare.

CMS is using the global recovery process for the Roundup claims for those Medicare beneficiaries whose attorneys enter them into this process. Because of the relative amount of the global claim related to the cost of NHL treatment compared to overall settlement proceeds, CMS is seeking approval from the U.S. Department of Justice (DOJ) regarding the amount, if any, by which CMS may compromise its recovery claim. No determination has been made as to whether a compromise will be available as part of the global resolution.

Frequently Asked Questions Regarding Roundup MSP Recovery

Q: Does Medicare have a "lien" against my Roundup settlement?

A: Pursuant to §1862(b) of the Social Security Act, as codified in 42 U.S.C. § 1395y(b), Medicare must be reimbursed for payments it made conditionally when another person or entity was responsible for making that payment. If you have not received letters from the BCRC, your attorney likely enrolled you in the Roundup global resolution. A Medicare "claim" amount on your settlement forms is likely an allocation determined by your attorney and/or the lien resolution company hired by your attorney. If you are participating in the global resolution process then CMS did not determine your allocation amount. Please contact your attorney and/or the applicable lien resolution company to discuss the "claim" amount.

Q: How do I know if Medicare's claim against my Roundup settlement is being resolved through the standard process or through the Roundup global resolution? Is it better to have my Roundup settlement resolved through the standard process with the BCRC or "globally"?

A: Please carefully review all information received from your attorney and contact them with any questions regarding how Medicare's claim is being resolved. The options are a personal decision, and it is best to discuss this with your attorney

Q: I called the BCRC, why do they say they have no record of my Roundup case when I called?

A: Your attorney likely enrolled you in the Roundup global resolution process. The BCRC does not have information on the Roundup global resolution because they are responsible for standard MSP recovery only and do not handle the global recovery process. Please contact your attorney and/or the applicable lien resolution company for information on the Roundup global resolution.

Q: I have been told that Medicare "renege" on the Roundup global resolution agreement, is this true?

A: No. There has not been an agreement for Medicare to "renege" on as the agreement has not yet been finalized. CMS is currently seeking approval from DOJ regarding the amount, if any, that CMS may compromise its recovery claim. No determination has been made as to whether a compromise will be available as part of the global resolution.

Q: When will CMS be able to offer the final terms for the Roundup global recovery claim?

A: CMS is working in consultation with DOJ to consider a compromise of this debt as part of the Roundup global recovery claim. CMS is working diligently to resolve this matter as quickly as possible, balanced against the obligation to protect taxpayers and the Medicare Trust Funds.

Q: How do I remove myself from the Roundup global resolution and have my settlement resolved through the BCRC?

A: Please coordinate removal from the Roundup global resolution with your attorney and the applicable lien resolution company. You and/or your attorney and/or lien resolution company will need to start a recovery case with the BCRC (please see <https://www.cms.gov/medicare/coordination-of-benefits-and-recovery/coordination-of-benefits-and-recovery-overview/contacts/contacts-page> for how attorneys and beneficiaries may contact the BCRC).

Q: How long will it take to work with the BCRC to resolve Medicare's claim against my Roundup settlement?

A: Medicare's recovery demand letter can be issued within 90 days of your case being established in the standard recovery process. As the standard recovery process affords beneficiaries the opportunity for administrative appeals and to request waiver and compromise of recovery, true resolution in full depends upon whether a beneficiary pursues additional administrative remedies outside of simply paying the full amount owed. Please see <https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Coordination-of-Benefits-and-Recovery-Overview/Reimbursing-Medicare/Reimbursing-Medicare-> for more information on the BCRC recovery process.