

Report to Congress

**Computation of Annual Liability Insurance (Including Self-Insurance), No-Fault
Insurance, and Workers' Compensation Settlement Recovery Threshold**

**As Required by Section 202 of the Medicare IVIG Access and Strengthening Medicare
and Repaying Taxpayers Act of 2012**

(SMART Act)

From the

Department of Health and Human Services

December 2022

REQUIREMENT:

Section 202 of the Medicare IVIG Access and Strengthening Medicare and Repaying Taxpayers Act of 2012 (the SMART Act) amended Section 1862(b) of the Social Security Act (the Act), in part by adding a Section (b)(9), which requires the Secretary of the Department of Health and Human Services (the Secretary) to calculate and publish each year a single threshold amount for settlements, judgments, awards or other payments (hereafter referred to as settlements) for obligations arising from liability insurance (including self-insurance) for alleged physical trauma-based incidents (excluding alleged ingestion, implantation, or exposure cases). The single threshold amount for a year is to be set so that the average cost of collecting conditional payments is at least equal to the amount credited to the Medicare Trust Fund. This requirement ensures that the Centers for Medicare & Medicaid Services (CMS) is not spending more to recover funds than it is collecting.

BACKGROUND:

The Medicare Secondary Payer (MSP) provisions of the Social Security Act prohibit Medicare from making payment where a payer that is primary to Medicare has been identified. The primary payer, such as liability insurance, no-fault insurance, or workers' compensation, often demonstrates primary payment responsibility through a settlement. Accordingly, Medicare is obligated by statute to recover conditional payments it made for medical care related to the settlement. Medicare's recovery is limited to the amount of the settlement less any attorney fees or costs the beneficiary incurred to obtain the settlement.

Pursuant to Section 202 of the SMART Act, in 2022, CMS reviewed all of the estimated costs related to collection of conditional payments arising from liability insurance, no-fault insurance, or workers' compensation for alleged physical trauma-based incidents. Effective January 1, 2023, CMS' threshold for physical trauma-based liability insurance, no-fault insurance, and workers' compensation settlements will be \$750. Settlements of \$750 or less do not need to be reported to Medicare, and Medicare's conditional payments do not need to be repaid, as long as such settlements are under the threshold amount and the relevant primary payer does not have ongoing responsibility for medicals.

COST OF COLLECTION METHODOLOGY:

To determine the cost of collection, CMS obtained the most recent twelve month's costs of the contractor that performs MSP work related to identifying and recovering conditional payments for liability insurance, no-fault insurance and workers' compensation settlements. The CMS Benefits Coordination & Recovery Center (BCRC) performed this work.

The BCRC spent \$54,230,407.93 on benefit coordination and recovery activities for liability insurance, no-fault insurance, and workers' compensation. To calculate an average cost per recovery case, CMS divided the total cost of the relevant recovery activities performed by the BCRC by the total number of demand letters. This results in an average cost of collection per case of \$306.25 ($\$54,230,407.93 / 177,075 \text{ cases} = \306.25).

THRESHOLD AMOUNTS:

To determine the settlement thresholds, we compared the estimated cost of collection per case of approximately \$306 to the average demand amounts per settlement range for liability insurance (including self-insurance), no-fault insurance, and workers' compensation plans. The charts below identify the number of demand letters and the average amount demanded for the settlement ranges listed.

Table 1: Liability Insurance

Settlement Range	Total Demand Amount	# of Demands	Average Demand Amount
Over \$0, less than or equal to \$300	\$ 34,644.42	234	\$148.05
Over \$300, less than or equal to \$500	\$ 62,197.19	199	\$312.55
Over \$500, less than or equal to \$750	\$ 90,993.76	229	\$397.35
Over \$750, less than or equal to \$1,000	\$ 522,377.35	1182	\$441.94
Over \$1,000, less than or equal to \$1,500	\$ 711,286.25	1388	\$512.45
Over \$1,500, less than or equal to \$2,000	\$1,039,905.88	1759	\$591.19

Table 2: No-Fault Insurance

Settlement Range	Total Demand Amount	# of Demands	Average Demand Amount
Over \$0, less than or equal to \$300	\$ 5,804.13	53	\$109.51
Over \$300, less than or equal to \$500	\$ 6,864.09	23	\$298.44
Over \$500, less than or equal to \$750	\$ 4,896.67	12	\$408.06
Over \$750, less than or equal to \$1,000	\$13,153.45	22	\$597.88
Over \$1,000, less than or equal to \$1,500	\$15,954.15	23	\$693.66
Over \$1,500, less than or equal to \$2,000	\$22,158.09	27	\$820.67

Table 3: Workers' Compensation

Settlement Range	Total Demand Amount	# of Demands	Average Demand Amount
Over \$0, less than or equal to \$300	\$ 2,115.25	16	\$132.20
Over \$300, less than or equal to \$500	\$ 3,584.98	10	\$358.50
Over \$500, less than or equal to \$750	\$ 1,387.86	3	\$462.62
Over \$750, less than or equal to \$1,000	\$ 5,314.88	11	\$483.17
Over \$1,000, less than or equal to \$1,500	\$ 8,619.82	11	\$783.62
Over \$1,500, less than or equal to \$2,000	\$57,666.17	61	\$945.35

CONCLUSION:

Based on this information, CMS determined that it will maintain a \$750 threshold for 2023 so that physical trauma-based settlements of \$750 or less do not need to be reported and Medicare's conditional payment amount for these settlements does not need to be repaid. For liability insurance the calculated cost of collection of \$306 most closely aligns with and without exceeding, the average highlighted demand amount of \$312.55 for settlements of over \$300 to \$500. The limited number of demands within the "Over \$500, less than or equal to \$750" range represents a minor amount of missed potential recoveries by maintaining the \$750 threshold. For 2022, these missed recoveries would have totaled \$90,933.76 (229 cases at \$397.35). The cost for CMS to alter supporting systems, to alter program documentation, and to perform outreach to external stakeholders for a reduction to a \$500 threshold for this insurance type would far exceed potential recoveries for settlements in this range.

For no-fault insurance settlements, CMS will maintain the current threshold of \$750, where the no-fault insurer does not otherwise have ongoing responsibility for medicals. For no-fault insurance the calculated cost of collection of \$306, most closely aligns with and without exceeding the average highlighted demand amount of over \$500 to \$750.

For workers' compensation insurance settlements, CMS will maintain the current threshold of \$750, where the workers' compensation carrier does not otherwise have ongoing responsibility for medicals. For workers' compensation insurance the calculated cost of collection of \$306, most closely aligns with and without exceeding the average highlighted demand amount of over \$300 to \$500. The limited number of demands within the "Over \$500, less than or equal to \$750" range represents a minor amount of missed potential recoveries by maintaining the \$750 threshold. For 2022, these missed recoveries would have totaled \$1,387.86 (3 cases at \$462.62) workers' compensation settlements. The cost for CMS to alter supporting systems, to alter program documentation, and to perform outreach to external stakeholders for a reduction to a \$500 threshold for this insurance type would far exceed potential recoveries for settlements in this range.