

Medicare Secondary Payer (MSP) Liability Insurance, No-Fault Insurance & Workers' Compensation Recovery Process

Note: This presentation is intended for Medicare beneficiaries and their representatives.

Topics

- Medicare's Right of Recovery;
- Overview of the Recovery Process;
- When to contact the Benefits Coordination & Recovery Center (BCRC);
- The Rights and Responsibilities Letter;
- The difference between Proof of Representation and Consent to Release;
- What "Proof of Representation" documentation is required for representatives and their agents;

Topics (*Continued*)

- The conditional payment letter process and timeline;
- What to provide the BCRC when there is a settlement, judgment, award, or other payment;
- The recovery demand letter process and timeline; and actions subsequent to the demand letter.

Medicare's Right of Recovery

Non-Group Health Plan (NGHP)

- This document refers to Liability Insurance (Including Self-Insurance), No-Fault Insurance, and Workers' Compensation collectively as Non-Group Health Plan or NGHP.
- The applicable statute is 42 U.S.C. 1395y(b). See particularly, 42 U.S.C. 1395y(b)(2)(A)&(B). See also 42 CFR Part 411 for the applicable regulations.
- Medicare is secondary to all types of liability insurance, no-fault insurance, or workers' compensation. Note: For liability insurance, this includes self-insurance which is defined by statute as follows: "An entity that engages in a business, trade, or profession shall be deemed to have a self-insured plan if it carries its own risk (whether by a failure to obtain insurance, or otherwise) in whole or in part."

Medicare's Right of Recovery *(continued)*

Non-Group Health Plan (NGHP)

- Medicare may make conditional payments while a NGHP claim is pending but is entitled to repayment. “A primary plan, and an entity that receives payment from a primary plan, shall reimburse the appropriate Trust Fund for any payment made by the Secretary under this title with respect to an item or service if it is demonstrated that such primary plan has or had a responsibility to make payment with respect to such item or service. A primary plan's responsibility for such payment may be demonstrated by a judgment, a payment conditioned upon the recipient's compromise, waiver, or release (whether or not there is a determination or admission of liability) of payment for items or services included in a claim against the primary plan or the primary plan's insured, or by other means.”

Overview of the Recovery Process

- The Benefits Coordination & Recovery Center (BCRC) is responsible for ensuring that Medicare gets repaid by the beneficiary for any conditional payments it makes. The “Beneficiary NGHP Recovery Process Flowchart” provides the typical steps involved in recovering conditional payments from the Medicare beneficiary. This document can be accessed by clicking the [Attorney Services](#) link.

BCRC Roles & Responsibilities for NGHP

The BCRC:

- Is responsible for the collection and maintenance of the MSP information in CMS' systems.
- Develops and researches MSP occurrences, as appropriate. (Sources include: Identification of a pending NGHP claim by a beneficiary or his or her attorney or other representative, by an insurer or other entity, through claims processing information, through the Initial Enrollment Questionnaire [IEQ] completed by new beneficiaries, etc. Identification may also occur through MMSEA Section 111 reporting.)
- Updates data in CMS' systems regarding MSP occurrences (terminations, changes in effective dates, address changes, etc).

Contacting the BCRC in Pending NGHP Cases

Contacting the BCRC is always the first step for interacting with Medicare if you have a pending NGHP claim. The BCRC needs the information below to get started:

- **Beneficiary Information**
 - Name
 - Health Insurance Claim Number (HICN)
 - Gender & Date of Birth
 - Complete Address & Phone number
- **Case Information**
 - Date of Incident (DOI): Date of injury/accident, date of first exposure or ingestion, date of implant.
 - Description of alleged injury or illness; description of alleged harm.
 - Type of Claim (liability insurance [including self-insurance], no-fault insurance, workers' compensation).
 - Insurer/workers' compensation entity name & address.

Contacting the BCRC in Pending NGHP Cases *(Continued)*

- Representative Information
 - Attorney or other representative name
 - Law Firm name if the representative is an attorney
 - Address and phone number

Contacting the BCRC

By Telephone

BCRC Call Center:

1-855-798-2627

1-855-797-2627 (TTY/TDD)

Hours of Operation: Monday – Friday 8 a.m. - 8 p.m. ET

By Mail - General Inquiries

MEDICARE – MSP General Correspondence

P.O. Box 138897

Oklahoma City, OK 73113-8897

Rights and Responsibilities Letter

- Once the BCRC establishes an NGHP MSP occurrence in CMS' systems, a case is established in the BCRC's recovery system, and the BCRC will issue a "Rights and Responsibilities Letter."
Note: If Medicare is pursuing recovery directly from the insurer/workers' compensation entity, the beneficiary and beneficiary's attorney or other representative will receive a copy of recovery correspondence sent to the insurer/workers' compensation entity.
- The Rights and Responsibility (RAR) letter is mailed to all appropriate individuals/entities associated with the case and is accompanied by:
 - A correspondence coversheet
 - An educational brochure
 - A Privacy Act enclosure

Claim Retrieval Process

- The BCRC begins retrieving all claims paid by Medicare with dates of service on or after the Date of Incident. Once the BCRC receives this information, the claims are reviewed to determine which services are related to the NGHP claim.
- The BCRC is not able to provide the Conditional Payment information until the claim information has been reviewed.
- Send the Proof of Representation (POR) or Consent to Release (CTR), as appropriate, to the BCRC as soon as possible.
- If no valid POR or CTR document has been received by the BCRC, the Conditional Payment Letter (CPL) will **ONLY** be sent to the beneficiary and any no-fault insurer or workers' compensation entity reflected in the BCRC's records.

Proof of Representation vs. Consent to Release

Documentation requirements for a wider array of POR or CTR situations can be found in the "POR vs. CTR" presentation. This document can be accessed by clicking the [Medicare's Recovery Process](#) link. The presentation includes:

- Beneficiary non-attorney representatives.
- Beneficiary attorney representatives.
- Beneficiary guardians, conservators, power of attorney, Medicare representative payees.
- Situations where the beneficiary's representative (representative payee, conservator, guardian, power of attorney) has hired an attorney or the beneficiary attorney has referred the case to another attorney.
- Deceased beneficiaries.
- Workers' compensation or no-fault insurance vs. liability insurance (including self-insurance).
- Agents for insurers or workers' compensation carriers.

Other Resources

For purposes of this presentation, we will be focusing on the documentation required if you are an attorney representing a beneficiary, including if you are using an agent to assist you in resolving any potential Medicare claim recovery. However, you should take the time to review the full “POR vs. CTR” presentation for other issues.

Consent to Release

- The beneficiary has authorized an individual or entity to receive certain information from the BCRC for a limited period of time.
- The Consent to Release does **NOT** give the individual or entity the authority to act on behalf of the beneficiary.
- The Consent to Release does **NOT** give the individual or entity receiving beneficiary information the right to further release that information.
- The exchange of information is like a **one-way street**. (i.e., The flow of information goes only from the BCRC to the individual or entity the beneficiary has authorized on the consent to release.)

Proof of Representation

- The beneficiary has authorized the individual or entity (including an attorney) to **ACT** on the beneficiary's behalf.
- The attorney or other representative may receive and/or submit information/requests on behalf of the beneficiary including:
 - Responding to requests from the BCRC
 - Disputing unrelated claims on conditional payment letters
 - Correcting case related information (e.g., date of incident)
 - Filing an appeal (if appropriate) or filing a request for waiver of recovery (if appropriate)
- The exchange of information is like a **two-way street**. (i.e., Information can be exchanged between the BCRC and the attorney or other representative that the beneficiary has authorized to act on their behalf.)

Proof of Representation Requirements – Beneficiary Attorney Representative

- **Attorneys representing beneficiaries** may submit their retainer agreement with the beneficiary if:
 - The retainer agreement is on attorney letterhead or accompanied by a cover note on letterhead,
 - The retainer agreement is signed by the beneficiary,
 - The beneficiary's name and Medicare Health Insurance Claim Number (HICN) are printed at the top of the form (this may be added after the retainer agreement is signed)
 - The retainer agreement is signed or countersigned and dated by the attorney.
- **Attorneys representing beneficiaries** may also provide the same proof of representation as non-attorneys if they wish to do so.

Proof of Representation Requirements – Beneficiary Attorney Representative *(continued)*

- **Attorney representing beneficiary refers a matter to another attorney** – The second attorney must have a letter from the first attorney showing his/her association on the beneficiary’s claim **and** the necessary proof of representation document or retainer agreement from the beneficiary to the first attorney.
- **Attorney representing beneficiary hires an agent to resolve Medicare’s potential recovery claim** - The agent must have a beneficiary specific letter from the attorney specifying that the agent has been hired to resolve Medicare’s potential recovery claim **and** the necessary proof of representation document or retainer agreement from the beneficiary to the attorney.
- In other words, you must have an appropriate chain of authorization. We need to be able to link the beneficiary to you.

“Proof of Representation” and “Consent to Release” Model Language

- Model language for “proof of representation” and “consent to release” can be accessed by clicking the [Medicare’s Recovery Process](#) link.
- Individuals/entities are not required to use this model language but must provide all of the information requested in the model language.

Conditional Payment Letter (CPL)

- A “Conditional Payment Letter” or “CPL” provides information on items or services the BCRC has identified as being related to the pending NGHP claim. The conditional payment amount is an **interim amount**. Medicare may continue to make conditional payments while a matter is pending. Consequently, the BCRC cannot provide a final conditional payment amount until there is a settlement or other resolution.
- An initial CPL will be issued to all authorized individuals/entities within 65 days of the date of the Rights and Responsibilities Letter. Additional requests for a CPL will not expedite the process for the initial CPL.

Conditional Payment Letter (CPL) *(Continued)*

- If the BCRC does not timely receive proof of representation for the beneficiary or information concerning the no-fault insurer or workers' compensation, the initial CPL will be issued solely to the beneficiary. The most expedient way for the beneficiary's attorney or other representative to obtain a copy of the CPL in this situation is to request a copy from the beneficiary.
- Review the Conditional Payment Letter thoroughly to ensure all case related claims are included.
- Updated conditional payment amounts will appear automatically on the beneficiary's [mymedicare.gov](https://my.medicare.gov) record. (An attorney or other representative can only obtain access through his/her client).

Notice of Settlement, Judgment, Award, or Other Payment

- Once case has settled, appropriate documentation must be furnished to the BCRC. Required information includes:
 - Date of Settlement, Judgment, Award, or Other Payment Amount
 - Attorney's fees (borne by the beneficiary)
 - Other procurement costs borne by the beneficiary (itemized)
 - In some instances a copy of the settlement/judgment/award will be requested as well as a copy of the release signed in connection with the settlement, judgment, award or other payment.
- The BCRC takes attorney fees and other procurement costs borne by the beneficiary into account when computing a final demand amount (see 42 CFR 411.37). **Note:** If the beneficiary's representative hires another individual or entity to resolve any Medicare recovery claim, this fee may **not** be included in the procurement cost. This is not a cost incurred to obtain the settlement, judgment, award or other payment.

Notice of Settlement, Judgment, Award, or Other Payment *Continued*)

- The “Final Settlement Detail” document can be used to fill in the above information. This document can be accessed by clicking the [Medicare’s Recovery Process](#) link.

Final Demand Letter

- Once appropriate documentation concerning a settlement, judgment, award, or other payment is received by the BCRC, a final demand letter is generated.
- Payment is due within 60 days of the date of the demand letter.

Final Demand Letter Interest

- Interest accrues from the date of the demand letter and will be assessed on the outstanding balance on day 61 if no payment is received within 60 days of the date of the demand letter.
- Payment is applied to interest first, principal second. Requests for appeal or waiver of recovery do not stop the accrual of interest.

Delinquency, Referral to Treasury

- The debtor is notified of delinquency through an Intent to Refer Letter (a “Notice of Intent to refer Debt to the Department of the Treasury or a Treasury Designated Debt Collection Center for Cross-Servicing and Offset of Federal Payments”), which provides 60 days for a response resolving the debt.
- If full repayment or Valid Documented Defense is not received within 60 days of Intent to Refer Letter (150 days of Demand Letter), debt is referred to Treasury once any outstanding correspondence is worked.
- Once debt is referred to Treasury, all correspondence must be directed to Treasury not the BCRC.

Repaying Medicare

- When sending payment, please make checks payable to “**Medicare.**”
- Please ensure that the following information is included either on the check or on an attached remittance:
 - Beneficiary's Name
 - Beneficiary's Medicare Number
 - Type of Case
 - Date of Injury
- If the check is also payable to any parties other than Medicare, please ensure the check is fully endorsed prior to sending it to the BCRC.

BCRC CONTACT INFORMATION

Normal contact process:

- Call our call center at 1-855-798-2627 during our operating hours 8 a.m. – 8 p.m., Monday – Friday, Eastern time.
- Please have the beneficiary's Medicare Health Insurance Claim Number (HICN) when calling the BCRC.
- Please include the HICN and date of incident on all correspondence mailed or faxed to the BCRC.

WWW.MYMEDICARE.GOV

- See the site for further information.
- Beneficiaries can view various types of information on this site.(Attorneys or other representatives can only obtain access through the beneficiary they represent.)
- Where the BCRC has established a potential NGHP recovery case, once it has retrieved claims and reviewed them to determine which are related to the pending NGHP claim, this information will be available on an MSP TAB for that particular beneficiary. The information will be updated as the BCRC updates its information.