

Medicare Liens Attached to a Workers' Compensation Claim

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The second lien type I will be discussing in this [series of blogs](#) is Medicare. Medicare is a benefit under federal law which, in most cases, is provided to an individual either by that individual reaching 65 years of age or by that individual being found to be eligible for Social Security Disability benefits.

Social Security Disability recipients are eligible for Medicare in most cases after a two-year waiting period. Medicare has the right under federal law to recover any money they pay for medical treatment which they feel is something which should have been paid by a workers' compensation insurance carrier.

When Medicare is involved it is absolutely necessary at the very beginning of a claim that the worker tell his or her attorney that they are Medicare eligible. Most attorneys today ask that question at the start, but if they do not it is absolutely necessary for the worker to tell the attorney so that steps can be taken.

The first step the attorney will take is to notify Medicare through the Centers for Medicare and Medicaid Services, otherwise known as CMS. Upon notice from an attorney CMS will open a file and provide the attorney with information as to any payments claimed to be made by Medicare for injuries covered by Workers' Compensation. The payments Medicare wants to recover are known as conditional payments.

With the involvement of Medicare, liens can arise even without the worker's knowledge and without the worker specifically requesting treatment from Medicare. For example, even a worker who is covered by treatment through a workers' compensation carrier might see his or her family physician for unrelated issues. The worker might mention the fact that they have compensation claim, and in many situations the doctor notes that injury and someone in that doctor's clerical staff will list it as a code and submit it to Medicare along with the non-work related issues. Bingo, Medicare has a lien.

Accordingly, when an injured worker is being treated for non-work related conditions through his or her family physician or other physicians for an unrelated non-work condition it is absolutely necessary that no mention be made of the work injury in such a manner that might cause the doctor to note that in his or her chart.

Obviously, it is absolutely necessary that Medicare liens be determined and honored. In some cases it is possible to reduce them or eliminate them altogether. However, in no situation should they ever

be ignored.

Medicare, like [ERISA in the first blog in this series](#), is covered by federal law and they can have federal enforcement of such a lien. Other things Medicare can do is to stop benefits until the repayment has been reached. This is something no one wants to happen. Accordingly, it is absolutely necessary that should treatment, for any reason, be paid by Medicare that the necessary steps be taken to deal with that situation.

One unfortunate aspect of dealing with Medicare liens is the fact that a final amount of conditional payments sought to be recovered is not given until **after** a workers' compensation case settles. This absolutely does not make sense, and everyone knows this, but under Medicare guidelines, when a workers' compensation case is about to settle the attorney will contact Medicare for a statement of up-to-date amounts paid.

Unfortunately, Medicare will not give an absolute "final-final" number after they are served with a copy of the order closing the workers' compensation claim. Workers should be aware that even when money is taken from a settlement to be repaid to Medicare there is still a chance, although slim, that Medicare might come back with a larger number.

This is why many orders contain a provision that although they are closed the court retains jurisdiction should Medicare issues arise.

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