



CLM Annual Workers' Compensation Conference  
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## **Effectively Refuting Medicare Conditional Payments**

### Claims Professional Perspective

Scenario One: Unsolicited Notice of Lien from the CRC

Conditional Payment Notice (CPN) is received on a claim that is "open and active" or closed. **These notices may be encountered on both open and closed claims, including denied claims.** Regardless of the status of the claim, the notice must be addressed immediately. The CPN is a notice that identifies treatment which Medicare believes is related to the open claim. It is not a request for payment. When a CPN is received on an open or closed claim, it should be addressed as soon as possible by using this process:

### *Scenario Two: Requesting Lien Amount for settlement*

A claim is nearing settlement, but before negotiations take place the parties must know the amount of the Medicare lien.

### *Scenario Three: Collections Letter*

The first notice of a Medicare lien on the claim is received from either the Department of Treasury or an associated debt collection company. These notices may be encountered on both open and closed claims, including denied claims. These liens are time sensitive due to the fact that they are already delinquent and currently accruing interest each day they go unpaid. These letters

will often arrive in an office out sort mailbox queue due to the lack of information contained in the initial letter.

### *Appealing a final demand*

In the event a FD is received from the CRC that is incorrect, a formal appeal to the CRC should be made before payment is due. The typical timeline is to appeal the charges within 60 calendar days of receiving the final demand failure to act within 60 days will allow interest to begin to accrue. The steps below outline the process examiners will need to take in order to appeal the lien.

Client Perspective:

### *Guaranteed Cost program/carrier only*

Pretty easy as carrier will approve and handle. You may or may not have input on settlement. Will need to have the info to properly discuss with internal stakeholders.

### *Self-insured, large deductible dealing with legal and TPA*

Risk Managers and Claims managers with a fiduciary responsibility need to protect themselves and their company. Depending solely on defense or TPA could expose you to trouble. Ask the right questions and document your files when dealing with Medicare eligible employees.

### *Internal Stakeholders*

Depending on your reporting structure, you will want to have the right info to discuss claim settlement, total incurred and final resolution. Prior year claims are always a point of emphasis and typically closed file settlements are an item to discuss and highlight as a success, especially if you do it under the reserves.

Defense Perspective:

### *Conditional Payment Letters when Claimant's Counsel is reasonable and willing to work to a resolution.*

When Opposing Counsel is willing to assist, everyone's life is usually easier; that said, this is not always the case. In these cases, where, Opposing Counsel is reasonable and willing to assist, the initial conversations are the best place to lay a foundation and come up with a strategy to efficiently refute the Conditional Payment.

Having a strategy in place prior to these situations presenting themselves will assist in assuring you stay in compliance and are as successful as possible in refuting the Conditional Payment.

Conditional Payment Letters when Claimant's Counsel is unreasonable and unwilling to work to a resolution.

Best practices for dealing with Unreasonable Opposing Counsel's who seem unwilling to 'throw their hat in the ring' at all, when it comes to dealing with Medicare Conditional Payment Letters. Unfortunately, this can be normal, and having a strategy in place for these situations can be of great benefit in an achieving and expedited resolution. We will discuss and set forth strategies to manage these situations, which will include getting the Claims Professionals and in some cases the Client involved.

*Settlement Documents: The 'Form' is Bad Form when Medicare is or may be involved.*

Tips will be provided for dealing with different types of settlements and sample language will be given. Each case is unique and using 'Boiler Plate' language in every case can be dangerous. Certain situations need to be properly managed and this can be effectuated through the settlement documents. Avoiding 'Boiler Plate' language can provide a 'road-map' with regard to dealing with an unanticipated Conditional Payment Letter, which will include assuring exposure is kept to a minimum for our client.