How Can Medicare Affect My Personal Injury Settlement?

Written By Jeremy M. Wilson (jw@wardandsmith.com)  
May 2, 2018

Medicare is the federal health insurance program that covers people who are 65 or older and certain younger individuals with disabilities.

If you are a Medicare recipient and you are injured, Medicare may cover the cost of your medical care. However, if the costs Medicare pays are the result of an injury, and you have a successful personal injury claim and receive any judgment or settlement funds, you will be required to repay Medicare for any payments Medicare makes as a result of the injury.

Furthermore, in order to protect its right to reimbursement, by law, Medicare has an automatic lien on any compensation you receive from your personal injury claim. The lien gives Medicare a claim to the judgment or settlement funds and the Medicare lien is superior to any other person or entity, including you as the insured party. Unlike cases involving private health insurance, Medicare offers little to no flexibility to negotiate away, or negotiate down, its lien amount.

So You Have Resolved Your Personal Injury Claim, What’s Next?

Medicare requires you to report, within 60 days, any settlement or judgment resulting from any personal injury claims for which it has paid medical claims. Failure to timely report can result in substantial fines—as high as $1,000.00 per day.

While there are multiple ways to report the resolution of a personal injury claim, the easiest way is to visit the Medicare website and report any settlement or judgment electronically. Once the report is made, you will receive notice of the amount of the Medicare lien within approximately 120 days. The notice also will contain a list of all treatments and charges for which Medicare believes it should be reimbursed.

You or your attorney should review the list of treatments and charges for accuracy because Medicare is entitled to reimbursement only for medical treatment that is related to your personal injury claim (i.e., directly caused by the accident or other incident that led to your injury). For example, if you are involved in a motor vehicle collision and suffer a broken leg, then undergo medical treatment for your broken leg from January through March, but you also see your primary care physician in February because of the flu, there is no requirement for you to reimburse Medicare for payments associated with your treatment for the flu. Medicare's lien will apply only to the medical treatment you received for your broken leg.

Once any unrelated medical expenses are removed from the list of charges, Medicare will send a final...
payment demand within approximately 30 days. At that point, you or your attorney have a legal responsibility to either pay Medicare the amount of reimbursement covered by the Medicare lien, or to proceed with an appeal if there is reason to believe the amount of the lien is in error.

Unfortunately, once any unrelated medical expenses are removed, federal law prevents Medicare from accepting a lowered negotiated sum in all but a few rare situations. The intent of the law is that, in most cases, Medicare will be able to recover the entire amount of payments it made for injury-related medical care. This is the case even if the settlement or judgment amount is less than the Medicare lien. If that is the case, Medicare is entitled to receive the entire amount of the settlement or judgment, after a reduction for "procurement costs" (which are usually the attorneys' fees paid to get the settlement or judgment).

Admittedly, the process is a burdensome endeavor. However, in any personal injury action where Medicare has paid the first medical expenses, the smart move is to report and pay the claim for reimbursement.

The One-Third Reduction

As referenced earlier, one exception to the general "no reduction of the lien" rule applies if you are represented by an attorney. If that is the case, Medicare typically will reduce its lien by one-third. This is Medicare's recognition that the total recovery you receive from a judgment or settlement is already being reduced by the attorneys' fees, which often are paid as a contingency fee at or near one-third of the judgment or settlement amount.

Claims Resolved for $5,000.00 or Less

Fortunately, in cases that settle or result in a judgment for $5,000.00 or less, Medicare has a fixed percentage option. This is particularly helpful if you are trying to settle a case without the assistance of an attorney. In these cases, regardless of the amount of the total Medicare lien, Medicare typically will accept 25 percent of the total amount received by you in full and final resolution of its claim for reimbursement.

The Potential Requirement of a Medicare Set Aside

In some cases, as the injured party, you may be required to take into account the cost of any future treatment stemming from accident-related injuries. This can occur when you receive a settlement or judgment as a Medicare insured (or someone who soon will become a Medicare insured) and it is determined that your injury will require future care for which Medicare will be billed.

If that is the case, the law requires that Medicare's future interest be taken into account before disbursing the settlement or judgment funds. This might include establishing a "Medicare Set Aside" ("MSA") to pay for medical care for which Medicare would otherwise be responsible. If the requirement of future medical care is a realistic possibility, the best course of action is to speak with an experienced attorney who can help with the process and determine what's necessary to appropriately take into account Medicare's future interest.

Does an Admission of Liability Matter?

In most instances, when a personal injury claim is resolved by a negotiated settlement, the insurance company that will pay the settlement tenders to the injured party a Release and Settlement Agreement which, when signed, will terminate the claim. This agreement likely states that the insurance company (on behalf of its insured) is not admitting fault or liability.

At first glance, it may seem reasonable that this denial of liability creates an argument against the requirement that Medicare be reimbursed. After all, if there is no liability for causing the injury, how can the
payment be a result of the injury? Unfortunately, such agreements do not alleviate the Medicare reporting and reimbursement requirements.

Again, in any personal injury action where Medicare has paid medical expenses, or may pay them in the future, the smart move is to report and then pay the Medicare claim for reimbursement.

Who Will Ever Know?

Don't be surprised to learn that if you fail to report your settlement or judgment, there is still a good chance that Medicare will find out. Medicare flags payments it makes for certain medical treatments that often result from injuries associated with personal injury claims. So, if you break a bone and seek medical treatment, you will likely receive correspondence from Medicare asking if you suffered the injury on account of another’s negligence. You must truthfully respond to such requests and any others from Medicare. Failure to do so may jeopardize your eligibility and may even be a criminal offense.

Conclusion

Medicare has become increasingly stringent in making sure that its insureds reimburse it out of the proceeds from any personal injury settlements or judgments. Some would argue that this is an unwarranted and inconvenient obligation (after all, didn't you pay Medicare taxes for years in order to be entitled to collect it?). However, failure to report may result in even more unpleasant alternatives.

--

© 2020 Ward and Smith, P.A. For further information regarding the issues described above, please contact Jeremy M. Wilson.

This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.

We are your established legal network with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, NC.