

[42 CFR 411.46](#)

This document is current through the April 29, 2019 issue of the Federal Register. Title 3 is current through April 5, 2019.

Code of Federal Regulations > TITLE 42 -- PUBLIC HEALTH > CHAPTER IV -- CENTERS FOR MEDICARE & MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES > SUBCHAPTER B -- MEDICARE PROGRAM > PART 411 -- EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT > SUBPART C -- LIMITATIONS ON MEDICARE PAYMENT FOR SERVICES COVERED UNDER WORKERS' COMPENSATION

§ 411.46 Lump-sum payments.

(a) Lump-sum commutation of future benefits. If a lump-sum compensation award stipulates that the amount paid is intended to compensate the individual for all future medical expenses required because of the work-related injury or disease, Medicare payments for such services are excluded until medical expenses related to the injury or disease equal the amount of the lump-sum payment.

(b) Lump-sum compromise settlement.

(1) A lump-sum compromise settlement is deemed to be a workers' compensation payment for Medicare purposes, even if the settlement agreement stipulates that there is no liability under the workers' compensation law or plan.

(2) If a settlement appears to represent an attempt to shift to Medicare the responsibility for payment of medical expenses for the treatment of a work-related condition, the settlement will not be recognized. For example, if the parties to a settlement attempt to maximize the amount of disability benefits paid under workers' compensation by releasing the workers' compensation carrier from liability for medical expenses for a particular condition even though the facts show that the condition is work-related, Medicare will not pay for treatment of that condition.

(c) Lump-sum compromise settlement: Effect on services furnished before the date of settlement. Medicare pays for medical expenses incurred before the lump-sum compromise settlement only to the extent specified in § 411.47.

(d) Lump-sum compromise settlement: Effect on payment for services furnished after the date of settlement.--(1) Basic rule. Except as specified in paragraph (d)(2) of this section, if a lump-sum compromise settlement forecloses the possibility of future payment of workers' compensation benefits, medical expenses incurred after the date of the settlement are payable under Medicare.

(2) Exception. If the settlement agreement allocates certain amounts for specific future medical services, Medicare does not pay for those services until medical expenses related to the injury or disease equal the amount of the lump-sum settlement allocated to future medical expenses.

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

[42 U.S.C. 1302](#), 1395w-101 through 1395w-152, 1395hh, and 1395nn.

History

[54 FR 41734](#), Oct. 11, 1989.

Annotations

Case Notes

LexisNexis® Notes

Public Health & Welfare Law : Social Security : Medicare : General Overview

Public Health & Welfare Law : Social Security : Medicare : Providers : Reimbursement : Medicare Secondary Payer Act

Workers' Compensation & SSDI : Benefit Determinations : Medical Benefits : General Overview

Workers' Compensation & SSDI : Remedies Under Other Laws : General Overview

Public Health & Welfare Law : Social Security : Medicare : General Overview

Frazer v. Transcon. INS. Co., 374 F. Supp. 2d 1067, 2004 U.S. Dist. LEXIS 28356 (ND Ala Mar. 11, 2004).

Overview: *Where a claimant did not allege she risked denial of medical care or that Medicare would seek to recover from her in connection with her worker's compensation lump sum settlement agreement terminating future medical payments, she lacked standing under [42 U.S.C.S. § 1395y\(b\)\(3\)\(A\)](#) to allege the insurer violated the Medicare Secondary Payer statutes.*

- [42 C.F.R. § 411.46\(b\)\(2\)](#) includes not only future medical expenses but a compromise with respect to expenses already incurred. [Go To Headnote](#)

Public Health & Welfare Law : Social Security : Medicare : Providers : Reimbursement : Medicare Secondary Payer Act

[Hudson v. Cave Hill Cemetery](#), 331 S.W.3d 267, 2011 Ky. LEXIS 8 (Ky Jan. 20, 2011).

Overview: *In a medical fee dispute and reopening of a workers' compensation claim, alleged settlement agreement was incomplete because the parties clearly had not come to terms concerning the portion of the lump sum to be allocated to the Medicare Set-Aside Account and thus was not a settlement agreement pursuant to Ky. Rev. Stat. § 342.265(1).*

- [42 U.S.C.S. 1395y\(b\)\(2\)](#), the Medicare secondary payer exclusion, prohibits Medicare from paying an expense that has been made or can reasonably be expected to be made under a workers' compensation award. The statute permits Medicare to recover such a payment from the primary plan, any entity that has received payment from primary plan, or any entity that has received payment from the proceeds of the primary plan's payment. [42 C.F.R. 411.46](#) requires a lump-sum workers' compensation settlement that includes future medical benefits to consider Medicare's interests adequately for the remainder of the worker's life expectancy. When an injured worker who is entitled to Medicare or has a reasonable expectation of Medicare enrollment within 30 months of a settlement that provides benefits totaling more than \$ 250,000, a proposed settlement agreement may be submitted to the Centers for Medicare and

42 CFR 411.46

Medicaid Services for approval in order to establish that it sets aside a reasonable amount to pay future injury-related medical expenses. [Go To Headnote](#)

Workers' Compensation & SSDI : Benefit Determinations : Medical Benefits : General Overview

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Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: Nomenclature changes affecting Chapter IV appear at [45 FR 53806](#), Aug. 13, 1980; [50 FR 12741](#), Mar. 29, 1985; [50 FR 33034](#), Aug. 16, 1985; [51 FR 41338](#), Nov. 14, 1986; [53 FR 6634](#), Mar. 2, 1988; [53 FR 47201](#), Nov. 22, 1988; [56 FR 8852](#), Mar. 1, 1991; [66 FR 39450, 39452](#), July 31, 2001; [67 FR 36539, 36540](#), May 24, 2002; [77 FR 29002, 29028](#), May 16, 2012.]

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: The authority citation for Part 411 was revised at [83 FR 59452, 60073](#), Nov. 23, 2018, effective Jan. 1, 2019. For the convenience of the user, the authority citation effective Jan. 1, 2019, has been set out below:

42 CFR 411.46

[42 U.S.C. 1302](#), 1395w-101 through 1395w-152, 1395hh, and 1395nn.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 411 Interpretations, see: [70 FR 13397](#), Mar. 21, 2005.]

[PUBLISHER'S NOTE: Nomenclature changes affecting part 411 appear at [71 FR 9466, 9471](#), Feb. 24, 2006, as confirmed at [73 FR 9679, 9684](#), Feb. 22, 2008.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 411 Rulings, see: [78 FR 16614](#), Mar. 18, 2013.]

[PUBLISHER'S NOTE: [72 FR 13710](#), Mar. 23, 2007, provides "This notice extends the timeline for publication of the Phase III final rule through March 26, 2008. In accordance with section 1871(a)(3)(C) of the Act, the March 26, 2004 interim final rule [\[69 FR 16054\]](#) shall remain in effect through March 26, 2008 (unless Phase III is published and becomes effective before March 26, 2008)."]

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