

## 42 CFR 411.47

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***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***

### **§ 411.47 Apportionment of a lump-sum compromise settlement of a workers' compensation claim.**

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**(a) Determining amount of compromise settlement considered as a payment for medical expenses.**

**(1)** If a compromise settlement allocates a portion of the payment for medical expenses and also gives reasonable recognition to the income replacement element, that apportionment may be accepted as a basis for determining Medicare payments.

**(2)** If the settlement does not give reasonable recognition to both elements of a workers' compensation award or does not apportion the sum granted, the portion to be considered as payment for medical expenses is computed as follows:

**(i)** Determine the ratio of the amount awarded (less the reasonable and necessary costs incurred in procuring the settlement) to the total amount that would have been payable under workers' compensation if the claim had not been compromised.

**(ii)** Multiply that ratio by the total medical expenses incurred as a result of the injury or disease up to the date of the settlement. The product is the amount of the workers' compensation settlement to be considered as payment for medical expenses.

Example: As the result of a work injury, an individual suffered loss of income and incurred medical expenses for which the total workers' compensation payment would have been \$ 24,000 if the case had not been compromised. The medical expenses amounted to \$ 18,000. The workers' compensation carrier made a settlement with the beneficiary under which it paid \$ 8,000 in total. A separate award was made for legal fees. Since the workers' compensation compromise settlement was for one-third of the amount which would have been payable under workers' compensation had the case not been compromised ( $\$ 8,000/\$ 24,000 = 1/3$ ), the workers' compensation compromise settlement is considered to have paid for one-third of the total medical expenses ( $1/3 \$ 18,000 = \$ 6,000$ ).

**(b)** Determining the amount of the Medicare overpayment. When conditional Medicare payments have been made, and the beneficiary receives a compromise settlement payment, the Medicare overpayment is determined as set forth in this paragraph (b). The amount of the workers' compensation payment that is considered to be for medical expenses (as determined under paragraph (a) of this section) is applied, at the workers' compensation rate of payment prevailing in the particular jurisdiction, in the following order:

**(1)** First to any beneficiary payments for services payable under workers' compensation but not covered under Medicare.

## 42 CFR 411.47

(2) Then to any beneficiary payments for services payable under workers' compensation and also covered under Medicare Part B. (These include deductible and coinsurance amounts and, in unassigned cases, the charge in excess of the reasonable charge.)

(3) Last to any beneficiary payments for services payable under workers' compensation and also covered under Medicare Part A. (These include Part A deductible and coinsurance amounts and charges for services furnished after benefits are exhausted.)

The difference between the amount of the workers' compensation payment for medical expenses and any beneficiary payments constitutes the Medicare overpayment. The beneficiary is liable for that amount.

Example: In the example in paragraph (a) of this section, it was determined that the workers' compensation settlement paid for \$ 6,000 of the total medical expenses. The \$ 18,000 in medical expenses included \$ 1,500 in charges for services not covered under Medicare, \$ 7,500 in charges for services covered under Medicare Part B, and \$ 9,000 in hospital charges for services covered under Medicare Part A. All charges were at the workers' compensation payment rate, that is, in amounts the provider or supplier must accept as payment in full.

The Medicare reasonable charge for physicians' services was \$ 7,000 and Medicare paid \$ 5,600 (80 percent of the reasonable charge). The Part B deductible had been met. The Medicare payment rate for the hospital services was \$ 8,000. Medicare paid the hospital \$ 7,480 (\$ 8,000 -- the Part A deductible of \$ 520).

In this situation, the beneficiary's payments totalled \$ 3,920:

Services not covered under Medicare	\$1,500
Excess of physicians' charges over reasonable charges	500
Medicare Part B coinsurance	1,400
Part A deductible	520
Total	3,920

The Medicare overpayment, for which the beneficiary is liable, would be \$ 2,080 (\$ 6,000-\$ 3,920).

## Statutory Authority

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### AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

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

## History

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

Annotations

## Case Notes

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**LexisNexis® Notes****Case Notes Applicable to Entire Part**[Part Note](#)**Research References & Practice Aids**

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**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 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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