



**U.S. Department of Health and Human Services
Centers for Medicare & Medicaid Services**

REPORT TO CONGRESS

Calendar Year 2024

**Strengthening Medicare and Repaying Taxpayers Act
Medicare Secondary Payer (MSP) Non-Group Health
Plan (NGHP) Threshold Report to Congress**

January 2024

REQUIREMENT:

Section 202 of the Medicare IVIG Access and Strengthening Medicare and Repaying Taxpayers Act of 2012 (the SMART Act) amended Section 1862(b) of the Social Security Act (the Act), in part by adding paragraph (9), which requires the Secretary of the Department of Health and Human Services (the Secretary) to calculate and publish each year a single threshold amount for settlements, judgments, awards or other payments (hereafter referred to as settlements) for obligations arising from liability insurance (including self-insurance) for alleged physical trauma-based incidents (excluding alleged ingestion, implantation, or exposure cases). The legislation also requires the Centers for Medicare & Medicaid Services (CMS) to report on the establishment and application of similar thresholds for conditional payment obligations arising from workers' compensation and no-fault insurance cases. The single threshold amount for a year is to be set so that the average cost of collecting conditional payments is at least equal to the amount credited to the Medicare Trust Fund. This requirement ensures that CMS is not spending more to recover funds than it is collecting.

BACKGROUND:

The Medicare Secondary Payer (MSP) provisions of section 1862 of the Act prohibit Medicare from making payment to the extent that payment has been made, or can reasonably be expected to be made, by a payer that is primary to Medicare. The primary payer, such as liability insurance, no-fault insurance, or workers' compensation, often demonstrates primary payment responsibility through a settlement. Accordingly, Medicare is obligated by statute to recover conditional payments it made for medical care related to any such settlement. Medicare's recovery is limited to the amount of the settlement less any attorney fees or costs the beneficiary incurred to obtain the settlement.

Pursuant to Section 202 of the SMART Act, in 2023, CMS reviewed all estimated costs related to collection of conditional payments arising from liability insurance, no-fault insurance, or workers' compensation for alleged physical trauma-based incidents. Effective January 1, 2024, the threshold for physical trauma-based liability insurance, no-fault insurance, and workers' compensation settlements will be \$750. Settlements of \$750 or less do not need to be reported to Medicare, and Medicare's conditional payments do not need to be repaid, as long as such settlements are under the threshold amount and the relevant primary payer does not have ongoing responsibility for medical expenses.

COST OF COLLECTION METHODOLOGY:

To determine the cost of collection, CMS reviewed costs of the contractor that performs MSP work related to identifying and recovering conditional payments for liability insurance, no-fault insurance, and workers' compensation settlements for the most recent twelve months. The CMS Benefit Coordination & Recovery Center (BCRC) performed this work.

The BCRC spent \$52,488,253.66 on benefit coordination and recovery activities for liability insurance, no-fault insurance, and workers' compensation. To calculate an average cost per recovery case, CMS divided the total cost of the relevant recovery activities performed by the BCRC by the total number of demand letters. This results in an average cost of collection per case of \$315 ($\$52,488,253.66 / 166,660 \text{ cases} = \314.94).

THRESHOLD AMOUNTS:

To determine the settlement thresholds, we compared the estimated cost of collection per case of approximately \$315 to the average demand amounts per settlement range for liability insurance (including self-insurance), no-fault insurance, and workers' compensation plans. The charts below identify the number of demand letters and the average amount demanded for the settlement ranges listed.

Liability Insurance:

Settlement Range	Total Demand Amount	# of Demands	Average Demand Amount
Over \$0, less than or equal to \$300	\$26,183.91	226	\$ 115.86
Over \$300, less than or equal to \$500	\$61,263.82	217	\$ 282.32
Over \$500, less than or equal to \$750	\$66,890.56	172	\$ 388.90
Over \$750, less than or equal to \$1,000	\$397,215.24	934	\$ 425.28
Over \$1,000, less than or equal to \$1,500	\$661,494.41	1,391	\$ 475.55
Over \$1,500, less than or equal to \$2,000	\$910,555.93	1,592	\$ 571.96

No-Fault Insurance:

Settlement Range	Total Demand Amount	# of Demands	Average Demand Amount
Over \$0, less than or equal to \$300	\$2,842.67	27	\$105.28
Over \$300, less than or equal to \$500	\$2,424.03	8	\$303.00
Over \$500, less than or equal to \$750	\$2,477.61	5	\$495.52
Over \$750, less than or equal to \$1,000	\$8,133.43	15	\$542.23
Over \$1,000, less than or equal to \$1,500	\$11,802.67	17	\$694.27
Over \$1,500, less than or equal to \$2,000	\$12,135.20	17	\$713.84

Workers' Compensation:

Settlement Range	Total Demand Amount	# of Demands	Average Demand Amount
Over \$0, less than or equal to \$300	\$932.42	8	\$116.55
Over \$300, less than or equal to \$500	\$2,455.45	8	\$306.93
Over \$500, less than or equal to \$750	\$1,328.25	2	\$664.13
Over \$750, less than or equal to \$1,000	\$5,013.63	6	\$835.61
Over \$1,000, less than or equal to \$1,500	\$4,343.22	7	\$620.46
Over \$1,500, less than or equal to \$2,000	\$49,861.45	60	\$831.02

CONCLUSION:

Based on this information, CMS determined that it will maintain a \$750 threshold for 2024 so that physical trauma-based settlements of \$750 or less do not need to be reported and Medicare's conditional payment amount for these settlements does not need to be repaid. For liability insurance, the calculated cost of collection of \$315 most closely aligns with and without exceeding the average highlighted demand amount of \$388.90 for settlements of over \$500 to \$750.

For no-fault and workers' compensation insurance settlements, CMS will maintain the current threshold of \$750, where the no-fault insurer and workers' compensation carrier does not otherwise have ongoing responsibility for medical expenses. For no-fault and workers' compensation insurance the calculated cost of collection of \$315, most closely aligns with and without exceeding the average highlighted demand amount of over \$500 to \$750.