

Report to Congress

**Computation of Annual Liability Insurance (Including Self-Insurance), No-Fault
Insurance, and Workers' Compensation Settlement Recovery Threshold**

**As Required by Section 202 of the Medicare IVIG Access and Strengthening Medicare
and Repaying Taxpayers Act of 2012**

(SMART Act)

From the

Department of Health and Human Services

Feb. 2018

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 a Section (b)(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 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 the Centers for Medicare & Medicaid Services (CMS) is not spending more to recover funds than it is collecting.

BACKGROUND:

The Medicare Secondary Payer (MSP) provisions of the Social Security Act prohibit Medicare from making payment where a payer that is primary to Medicare has been identified. 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 the 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 2017, CMS reviewed all of the costs related to collecting data and determining the amount of Medicare's recovery claim. Effective January 1, 2018, CMS' threshold for physical trauma-based liability insurance, no-fault insurance, and workers' compensation settlements will be \$750 or less. Such settlements do not need to be reported and Medicare's conditional payment amount related to these cases did not need to be repaid, as long as ongoing responsibility for medicals has not been reported to CMS.

COST OF COLLECTION METHODOLOGY:

To determine the cost of collection, CMS obtained the most recent twelve month's 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. The CMS Benefits Coordination & Recovery Center (BCRC) performed this work.

The BCRC spent \$66,510,786 on benefit coordination and recovery activities for liability insurance, no-fault insurance, and workers' compensation. To calculate an average cost per recovery case, the total cost was divided by the total number of demand letters. This results in an average cost of collection per case of \$322.51 ($\$66,510,786.65 / 206,2280 \text{ cases} = \322.51).

THRESHOLD AMOUNTS:

To determine settlement thresholds, we compared the estimated cost of collection per NGHP case of approximately \$323 to the average liability insurance, no-fault insurance, and workers’ compensation demand amounts per settlement range. The charts below identify the number of demand letters and the average amount demanded for the settlement ranges listed.

Note: Asterisks (**) indicate the average amount demanded for settlements that are over \$500, but less than or equal to \$750.

Table 1: Liability Insurance

Settlement Range	Total Demand Amount	# of Demands	Average Demand Amount
Over \$0, less than or equal to \$300	\$94,026.85	713	\$131.87
Over \$300, less than or equal to \$500	\$152,087.56	540	\$281.64
Over \$500, less than or equal to \$750	\$184,244.24	441	\$417.79**
Over \$750, less than or equal to \$1,000	\$321,745.21	787	\$408.82
Over \$1,000, less than or equal to \$1,500	\$893,530.63	1884	\$474.27
Over \$1,500, less than or equal to \$2,000	\$1,373,041.17	2550	\$538.45

Table 2: No-Fault Insurance

Settlement Range	Total Demand Amount	# of Demands	Average Demand Amount
Over \$0, less than or equal to \$300	\$24,957.64	200	\$124.79
Over \$300, less than or equal to \$500	\$24,459.68	74	\$330.54
Over \$500, less than or equal to \$750	\$40,336.33	76	\$530.74**
Over \$750, less than or equal to \$1,000	\$100,239.10	144	\$696.10
Over \$1,000, less than or equal to \$1,500	\$67,517.86	72	\$937.75
Over \$1,500, less than or equal to \$2,000	\$110,813.89	101	\$1,097.17

Table 3: Workers’ Compensation:

Settlement Range	Total Demand Amount	# of Demands	Average Demand Amount
Over \$0, less than or equal to \$300	\$13,860.32	110	\$126.00
Over \$300, less than or equal to \$500	\$11,409.63	34	\$335.58
Over \$500, less than or equal to \$750	\$16,456.84	33	\$498.69**
Over \$750, less than or equal to \$1,000	\$23,050.85	34	\$677.97

Settlement Range	Total Demand Amount	# of Demands	Average Demand Amount
Over \$1,000, less than or equal to \$1,500	\$39,302.15	44	\$893.23
Over \$1,500, less than or equal to \$2,000	\$73,271.72	91	\$805.18

CONCLUSION:

Based on this information, CMS determined that it should establish a \$750 threshold for 2018 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 settlements, the calculated cost of collection most closely aligns with the average highlighted demand amount of \$417.79 for settlements of over \$500 to \$750.

For workers' compensation and no-fault insurance settlements, CMS will maintain the current threshold of \$750, where the no-fault insurer or workers' compensation entity does not otherwise have ongoing responsibility for medicals. Although the cost of collection of \$323, most closely aligns with the average demand for settlements of \$300 to \$500, the limited number of demands for no-fault and workers' compensation within this range represents a minimal amount of missed potential recoveries. For 2017, these missed recoveries would have totaled \$35,810 (74 no-fault cases at \$330 totaling \$24,420 and 34 workers' compensation at \$335 totaling \$11,390). The cost for CMS and external stakeholders to lower the threshold to \$500 for these two insurance types would far exceed potential recoveries for settlements in this range.