Workers’ Compensation Compromise Settlements

Presented By:

Fredrick M. Bruner, Deputy Commissioner
Kathy Daniel, Sr. Compromise Settlement Analyst
Agenda

- Introduce staff
- Quick review of a few statistics
- Explain why the compromise settlement department exists
- Describe our internal processing of settlements
- Review general policies
Alert you to the most common reasons why settlements are rejected or delayed

Quickly review our policies regarding Medicare
  New development regarding CMS approval
Goals

- You understand our internal processing procedures
- You refresh your knowledge of our most important policies
- You are aware of the most common causes of delay in settlement approval
- We acknowledge and thank you for the important role you play in making the system work
- We provide contact information in case you ever have questions
Introduction of Staff
<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
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<tbody>
<tr>
<td>Frederick M. Bruner</td>
<td>Deputy Commissioner</td>
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<tr>
<td>Kathy Daniel</td>
<td>Sr. Compromise Settlement Analyst</td>
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<td>Kathy Jones</td>
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<td>Heather Jones</td>
<td>Compromise Settlement Specialist</td>
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<td>Linda Ambrose</td>
<td>Compromise Settlement Technician</td>
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<td>Nicole Wilkins</td>
<td>Compromise Settlement Technician</td>
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Statistics Compromise Settlement Department

- 5,445 - Settlements approved last year
- $241,901,522 – Total value of settlements approved in 2013
- $35,068,516 – Total attorney fees awarded last year
- 97% of settlements handled by P&O Department
Why Does the Settlement Department Exist?

- Statutory Mandate
- Need for Gatekeeper
- Examples of Bad Settlements
- Adjuster’s Fairness Makes the System Work
Processing of Settlements

Docked v. Non-docked Cases

- Docketed
  1. All documents sent to Deputy Commissioner.
  2. Deputy Commissioner accumulates all necessary documents, then has the option to approve settlement or send documents to P&O Department.
  3. Fastest way to submit – WebFile

- Non-docketed
  Mail v. WebFile
Compromise Settlement Department Procedures

- Technical Review by Compromise Settlement Technician
- Review by Compromise Settlement Analyst
- Review and Approval or Rejection by Deputy Commissioner
- Mailing of Order by Compromise Settlement Technician
General Policies

- Medical Provisions
- Must Consider Medicare’s Interests/MSA’s
- Ancillary Agreements/Blanket Releases/Confidentiality Agreements
- Child Support Orders
Top Reasons Settlements are Rejected by Compromise Settlement Technicians

- Incorrect or inconsistent information
- No medical records contained in Commission’s file as required by Rule 1.7 (C)(1)
- Pages missing and/or out of order
- Settlement documents not signed or properly notarized
- Employer Accident Reports not filed for unassigned claims
- Fee Agreement does not provide a specific amount for the fees and costs
Top Reasons Settlements are Rejected by Compromise Settlement Analysts

- Medical provisions do not comply with policy
- Settlement below value of claim
- Medicare issues
- Inconsistent Information
- Annuity – Documents do not include language required by Rule 1.7(D)
- Social Security pro-ration language not included
- Needs extensive medical treatment/Not at MMI
- Blanket releases/Confidentiality Agreements/Ancillary Agreements
- The claimant indicates that he does not feel the settlement is in his best interest
Other Reasons Settlements are Delayed

- P&O contains blanks for the amount of future Medicare-covered expenses. Both parties must agree on this amount. *Suggestion: when negotiating the settlement, arrive at an agreement for this amount and have this amount reflected in the settlement documents. This omission might delay approval by several weeks.*

- Attorney Fee Liens

- Documents have blanks for Social Security pro-ration language, and the parties have not provided the necessary information.

- Petition and Order references exhibits/attachments that were not filed with the settlement documents.

- File documents, particularly in cases of unrepresented claimants, fail to provide sufficient information for us to conclude that the settlement is clearly in the claimant’s best interest.
Medicare Issues
Settlements That Meet Thresholds for CMS Pre-Approval

- **Thresholds**
  
a. Medicare beneficiary – Settlement greater than $25,000
b. Reasonable expectation of Medicare within 30 months – Settlement greater than $250,000  
(May 22, 2011 Memorandum issued by CMS)

- **Policy**
  
a. Provide Approval letter or
b. Defendants agree to pay any additional monies required by CMS for the MSA. (This may not be approved by Commission if it appears claimant may go extensive amount of time without funds to pay for necessary medical treatment.)
Does Not Meet Threshold for Pre-Approval, but Claimant is a Medicare Beneficiary

- Require good faith Set-Aside or

- Letter from treating physicians concluding, to a reasonable degree of medical certainty, the claimant no longer requires any Medicare-covered treatment related to the workers’ compensation injury (March 29, 2013 Workers’ Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide)
All Other Cases

- Must Consider Medicare’s Interest
- Recommend a good faith set-aside or apportionment
Alternative Indemnification Language

In appropriate cases, we might allow indemnification in place of CMS approval. We would require a professionally prepared MSA proposal, based upon reasonable and supportable assumptions as to future treatment, and Commission approved indemnification agreement.
3rd Party Lien Waivers and Medicare Thresholds
Questions?

Index cards or bulletin board by registration desk

OR

Contact the Customer Contact Center:

- questions@workcomp.virginia.gov
- Toll free - 877-664-2566