Commutation vs. compromise

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One of the distinctions that Medicare regulations and manuals make between compromise and commutation cases is the absence of controversy over whether a WC carrier is liable to make payments. A significant number of WC lump-sum cases are commutations of future WC benefits where typically there is no controversy between the injured individual and the WC carrier over whether the WC carrier is actually liable to make payments. An absence of controversy over whether a WC carrier is liable to make payments is not the only distinction that Medicare's manuals and regulations make between compromise and commutation cases. Thus, lump-sum settlements should not automatically be considered as compromise cases simply because a WC carrier does not admit to being liable in a settlement agreement. Therefore, an admission of liability by the WC carrier is not the sole determining factor of whether or not a case is considered a compromise or commutation.

WC commutation cases are settlement awards intended to compensate individuals for future medical expenses required because of a work-related injury or disease. In contrast, WC compromise cases are settlement awards for an individual's current or past medical expenses that were incurred because of a work-related injury or disease. Therefore, settlement awards or agreements that intend to compensate an individual for any medical expenses after the date of settlement (i.e., future medical expenses) are commutation cases.

It is important to note that a single WC lump-sum settlement agreement can possess both WC compromise and commutation aspects. That is, some single lump-sum settlement agreements can designate part of a settlement for an injured individual's future medical expenses and simultaneously designate another part of the settlement for all of the injured individual's medical expenses up to the date of settlement. Conversely, a compromise case may posses a commutation aspect to it when a settlement agreement also stipulates to pay for future medical expenses. Therefore, it is possible for a single WC lump-sum settlement agreement to be both a WC compromise and a WC commutation case.

Generally, parties to WC commutation cases agree on a lump sum amount in exchange for giving up the usual continuing payments by WC for lost wages and for lifetime medical care related to the injuries. Such lump sum amounts are usually requested because the beneficiary wishes to use the funds for some specific purpose. For example, the individual's home may need to be remodeled to accommodate a wheelchair or, more typically, he or she is so disabled that lifetime attendant care is needed. In these latter cases, the injured individual seeks a lump-sum payment so that such care can be arranged with certainly in the future. The amount of the lump sum is typically established by using a life care plan[1] and actuarial methods to determine the individual's life expectancy. When WC has accepted full liability in a case prior to the creation of a WCMSA, the likelihood of any Medicare conditional payments being made is reduced. However, a WCMSA may only be used to pay for future medical services related to the WC injury or illness that would otherwise be reimbursable by Medicare.

WCMSAs are most often used in those cases in which the beneficiary is comparatively young and has an impairment that seriously restricts his or her daily living activity. WCMSAs are typically not created until the individual's condition has stabilized so that it can be determined based on past experience, what the future medical expenses may be.

[1] If a life care plan is not used to justify the injured individual's future medical expenses, then the injured individual or his/her representative must present other alternative evidence that sufficiently justifies the amounts set-aside for Medicare.