

February 22, 2023

ROUNDUP® Injured Claimant Update on Medicare Lien Resolution

As you may know, and pursuant to protocol established by ROUNDUP® leadership counsel, Medicare, and ARCHER, a Medicare Global model was established to efficiently resolve the Medicare Parts A and B liens of settling ROUNDUP® claimants.

In the Medicare Global model, Medicare is due one lump sum for an approved law firm 'Universe' (i.e. group) of settling claimants. Medicare does not and will not identify actual paid claim amounts due per claimant. Instead, it has calculated a per-beneficiary average amount due for each Medicare-entitled claimant in a universe. This average was derived by pulling claim data for a sample group of claimants, which includes claimants who only had Medicare A/B coverage, claimants with other health plan coverages like group health plans and Medicare Part C, and even those who had no treatment covered by Medicare. That amount is then multiplied by the total number of Medicare-eligible claimants to determine the total lump sum owed for the universe. ARCHER and law firms then work together to apply Medicare's published model allocation guidance and criteria to determine individual claimant lien obligation values.

On September 21, 2022, CMS (i.e. Medicare) abruptly changed course in the way it is resolving Medicare payments for ROUNDUP® claimants. Under Medicare's previous ROUNDUP® Points of Understanding (POU) that governed the Global model, CMS acknowledged that many claimants would need to be capped at 30% of their gross award due to the high lien values. ARCHER and other Lien Resolution Administrators (LRAs) operated under CMS' ROUNDUP® POU for nearly two years and accordingly distributed settlement funds to many thousands of ROUNDUP® claimants.

On September 21, 2022, CMS rescinded the feature of the global model that allowed for claimants' liens to be capped at 30%. CMS made this decision two years after issuing their original POU, effectively changing the process retroactively for thousands of previously processed beneficiaries.

February 2023 Update: ARCHER and your law firm are extremely concerned over the delays this issue has caused, as our primary goal and objective is finalizing medical liens so that injured ROUNDUP® plaintiffs like you can finally resolve their settlements. Upon learning of CMS's rescindment of the 30% cap feature of the global model, ARCHER immediately challenged Medicare's decision and also engaged the American Association for Justice (AAJ) to join in the effort. We were recently advised that the matter has been referred to the Department of Justice (DOJ) for guidance. On February 21, 2023, ARCHER through its outside counsel submitted a letter to CMS and the DOJ demanding urgent resolution of the current impasse related to the global model. While no timetable for a final decision has been revealed, ARCHER is hopeful that the DOJ's final decision will be forthcoming over the next several weeks, as opposed to many more months.

Claimant FAQs

What does this mean for you?

Effectively, all Medicare lien resolution is on hold pending an update from CMS on next steps. This is affecting all claimants in all of ROUNDUP®, not just your case.

If you have already received a distribution, there is nothing you need to do at this time. If you are expecting a second distribution, that distribution may be on hold pending resolution of the Medicare issue.

What are ARCHER and your firm doing to challenge the Medicare decision?

Please see above “February 2023 Update.”

Should you call Medicare or state legislators?

At this time, calling Medicare may cause more harm than good as they could open a duplicate file on your case. Additionally, AAJ has advised ARCHER that although a time may come when we may seek assistance contacting government officials, that time has not arrived. As such, we strongly urge you to stay patient while ARCHER, your firm, and AAJ work to resolve this issue.

Will my Medicare benefits be affected?

ARCHER does not anticipate any interruption to your Medicare benefits pending the resolution of this issue.

Who is to blame here?

Your law firm and ARCHER have acted timely and in accordance with the various ROUNDUP® Master Settlement Agreements, the preexisting ROUNDUP® Points of Understanding, and applicable Federal law to resolve your Medicare lien. But for the September 21, 2022 CMS update, liens would now be resolved for many Medicare-eligible claimants whose case met other applicable criteria as defined in the POU. The delays with Medicare are unprecedented and could not have been predicted.