

# CMS Increasing Threshold for Liability Settlements – Fixed Percentage Option

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By Shannon P. Metcalf on October 13, 2023

### The Fixed Percentage Option Threshold will Increase to \$10,000.00 for Liability Settlements on October 2, 2023 says The Centers for Medicare & Medicaid Services (CMS)

Since November 7, 2011, the Centers for Medicare and Medicaid Services (CMS) has permitted a Medicare beneficiary to elect to resolve his/her conditional payment claim in liability settlements via the "Fixed Percentage Option," which allows for payment of 25% of the gross settlement to Medicare to resolve the recovery claim. This option is available when all of the following requirements are met:

- The underlying injuries are physical injuries (do not relate to ingestion, exposure, or medical implant);
- The total settlement is \$5,000.00 or less;
- The option is elected before or at the same time of the submission of Notice of Settlement documentation, or by the date specified in the conditional payment notice (meaning before a demand is issued); and
- The beneficiary is in a position where he/she has not received and does not expect to receive any settlements, judgments, awards, or other payments related to the incident.

**As of October 2, 2023, this option will be available for liability settlements of \$10,000.00 or less, which will allow more liability settlements to opt into using this process.** This option is certainly helpful in situations where the conditional payments may exceed the recovery, as it allows for the beneficiary to retain some settlement funds. It also makes resolution of the claim faster and provides for a known amount of recovery to all interested parties. However, once the process is elected, the beneficiary cannot appeal the amount owed or seek a waiver of recovery. The demand is not reduced to account for attorney fees and other procurement costs. Also, keep in mind this process does not take into account any potential conditional payment claims from Medicare Advantage plans.

Hedrick Gardner will continue to monitor any updates in this regard and will provide additional information when available. Please contact Shannon Metcalf with questions regarding this notice, help with electing the fixed percentage option, or for any other Medicare inquiries.