
Program Memorandum Carriers

Department of Health &
Human Services (DHHS)
Centers for Medicare &
Medicaid Services (CMS)
Date: AUGUST 28, 2002

Transmittal B-02-056

CHANGE REQUEST 2214

SUBJECT: Furlong Lawsuit Settlement Payments

The Department of Health and Human Services has entered into a settlement agreement in the Furlong v. Thompson lawsuit wherein a class of anesthesiologists challenged the application of a multiple procedure payment rule (i.e., the “one and one-half rule”) to certain monitoring procedures. Under a District Court’s Amended Final Judgement, the Department must send physicians “as promptly as reasonably possible” a payment equal to 50 percent of the increase in the “limiting charge” for a “qualifying concurrent invasive monitoring procedure (CIMP),” provided that the higher limiting charge results from the Medicare carrier’s reversal and elimination of its prior application of the one and one half rule to the qualifying CIMP.

The Amended Final Judgement defines a “qualifying CIMP” as one of four anesthesia procedures (Healthcare Common Procedure Coding System (HCPCS) codes 36620, 36489, 93503, or 93501): (a) That was furnished to a Medicare beneficiary during calendar years 1992 or 1993 by a physician who declined assignment of the beneficiary's claim; and (b) For which the Medicare carrier reduced the “recognized payment amount” through application of the one and one half rule.

CMS’s Office of Information Services (OIS) has created carrier-specific files for your use in generating the Furlong settlement payments to individual physicians. The files are Direct Access Storage Device (DASD) and are currently residing on the CMS mainframe. The dataset names have the following format:

[MH51.@BFR2424.STTLMNT.CR\(carrier#\).#110801.](#)

The format of the records is as follows:

01 SETTLEMENT-OUT-REC	
05 SOR-CAR-NUM (carrier number)	PIC X(5)
05 SOR-CAR-LIN-PRFRMG-UPIN-NUM (Physician UPIN)	PIC X(6)
05 SOR-PRFRMG-PIN-NUM (Physician PIN #)	PIC X(10)
05 SOR-TOT-REIMBURSEMENT-AMT (Payment Amount)	PIC S9(15)V99 COMP-3

In addition, the Office of General Counsel has prepared a standard payment notice (Attachment I) for you to send to physicians who are eligible to receive Furlong settlement payments.

Carrier Action

CMS has centrally identified the claims and physicians affected and calculated the amount payable. Where there has been a change in the servicing carrier, the file data has been cross-walked and compiled under the current servicing carriers contract identification number.

Download and use your carrier-specific file(s) to issue Furlong standard payment notices and settlement payments to the affected physicians. In the carrier specific files created by CMS the physicians are identified by their Unique Physician Identification Number (UPIN) and carrier assigned Provider Identification Number (PIN). The PIN is the provider number assigned by the carrier that processed the claim. The amount payable to the physician is reflected in the Payment Amount field.

Using the UPIN and/or PIN information, check your provider files for the name and current or last known address for each physician contained in your carrier-specific file.

Scenario 1 - The only active billing number to which the UPIN or PIN is linked is a solo practice (i.e., no active group practice billing number is currently linked to the UPIN/PIN) and there is no Do Not Forward (DNF) flag currently set in your system for the physician.

Action: Send a payment notice (Attachment I) and the Furlong settlement check in a DNF envelope in the name of the physician (or entity) who's UPIN/PIN is shown on your settlement file.

In the event you have to issue checks manually (i.e., outside the system), send them in DNF envelopes and include Attachment I along with the check. If you wish to manually associate and send Attachment I with systems-generated checks you may do so.

If you're not able to send the payment notice and a systems generated settlement check in the same envelope, send the payment notice (Attachment II) to the physician in a DNF envelope. If the payment notice is not returned by the postmaster within 7 business days, issue a Furlong settlement check to the physician in a DNF envelope for the amount reflected in the Payment Amount field of your settlement file.

If a payment notice or settlement check is returned by the postmaster because the address is incorrect, develop for a good address for the physician. You may use whatever cost effective means are at your disposal to ascertain a physician's current address. However, if you are still unable to locate a current address, as a last resort, the negotiated settlement requires that you search the United States Postal Service National Change of Address (USPS NCOA) database for a current address for the physician. If you are unable to locate an address for the physician on your provider file, use the address contained on the UPIN file to initiate a search of the USPS NCOA database.

Scenario 2 - The active billing numbers to which the physician's UPIN/PIN is linked include both a solo practice and one or more group practice settings and there are no DNF flags set in your system for the physician.

Action: Issue the Furlong settlement check in the name of the physician (or entity) for the active solo practice linked to the UPIN/PIN shown on your settlement file. Follow the same procedure outlined for Scenario 1 above.

Scenario 3 - The only active billing number to which the physician's UPIN/PIN is linked is a group practice and there is no DNF flag set in your system for the group.

Action: Send the physician Attachments II and III in a DNF envelope. Send a Furlong settlement check in a DNF envelope only after the physician responds to your request by furnishing you with either a completed enrollment form or written instructions for issuing the settlement check in the name of someone other than the physician. Be sure to keep written responses on file in the event of any subsequent questions or issues concerning the appropriate Furlong settlement payee.

Scenario 4 - There are only inactive billing numbers linked to the PIN/UPIN of the physician.

Action: Using the physician's last known address in your provider files, follow the same procedure outlined for Scenario 3 above.

Scenario 5 - All other situations not encompassed by one of the scenarios above.

Action: You must make judgment calls regarding the appropriate development actions and letters to send the physician based on the available information. Consult your RO contact person if you need additional guidance.

Miscellaneous

Do not reopen, revise or adjust any claims for the beneficiaries or services encompassed by the Furlong settlement agreement. Although the services were nonassigned, make settlement payments directly to the physicians. Do not apply Furlong settlement payments to open account receivables. However, if a physician voluntarily requests that the payment be applied to an open account receivable, you may do so. No interest will be paid on Furlong settlement payments. No crossover claims/notices will be generated for the services encompassed by the settlement payments. No beneficiary notices or provider remittance advice statements will be generated for Furlong settlement payments. If physicians contact you with questions regarding their Furlong settlement payment, direct them to the Plaintiff Physicians Attorney at the address/phone number in Attachment I.

The Amended Final Judgement prohibits physicians who receive a Furlong settlement payment from billing the Medicare beneficiary (or the beneficiary's heirs, assigns, or agents) any additional monies for or related to the qualifying CIMP services.

Carrier Reporting Requirements

You must provide CMS with monthly reports (Attachment IV), beginning October 11, 2002, (for September 2002 activity), detailing monthly and year-to-date Furlong settlement payments issued, payments pending investigation, and payments that cannot be issued (e.g., physicians that cannot be located or are deceased). These monthly reports are to be manually prepared outside of the standard system. Reports will be due by 4 PM Eastern Standard Time on the second Friday of the month following the report period (e.g., the September 2002 report is due October 11, and the October report is due November 8, etc.). Send the reports via e-mail to: MPage@cms.hhs.gov.

Monthly reporting will continue until all Furlong settlement monies payable by your entity are either issued or you determine they cannot be effectuated (i.e., there are no physicians and dollars remaining to report in section B of the report). When submitting your final report indicate "(final report)" after the report month. On final reports be sure that section B has no physicians or dollars reported and that the physicians and dollars reported in sections A and C, when combined, equal the universe of physicians and settlement dollars you began with initially. CMS will use this information to report to the District Court and Plaintiffs, as required by the settlement agreement.

The *effective date* for this Program Memorandum (PM) is August 28, 2002.

The *implementation date* for this PM is August 28, 2002.

These instructions should be implemented within your current operating budget.

This PM may be discarded after August 31, 2003.

If you have any questions, contact your Regional office.

Attachments

PAYMENT PURSUANT TO LAWSUIT SETTLEMENT

Enclosed is your payment from Medicare under the terms of the settlement agreement reached in a class action lawsuit, *Furlong v. Thompson*, No. 94 Civ. 4817 (S.D.N.Y.). The lawsuit challenged the Medicare carriers application of a multiple procedure payment reduction rule (i.e., the so-called “one and one half rule”) to four concurrent invasive monitoring procedures (“CIMPs”), which were performed during 1992 and 1993 by a class of anesthesiologists who declined assignment of the patient-beneficiary’s claim for Medicare payment. The four CIMPs are categorized by Medicare under Healthcare Common Procedure Coding System (“HCPCS”) codes 36620, 36489, 93503, and 93501.

Medicare records indicate that you submitted non-assigned claims for one or more CIMPs that qualify for settlement payments. In accordance with the settlement agreement, the enclosed Medicare payment is 50% of the increase in the “limiting charge” for a qualifying CIMP, where the higher limiting charge results from the carrier’s reversal and elimination of its prior application of the one and a half rule to the CIMP. Please note that the settlement agreement imposes an important condition on the receipt of each settlement payment: You are prohibited from billing the Medicare patient-beneficiary (or beneficiary’s heirs, assigns, or agents) any additional monies for, or related to, the qualifying CIMP.

Any questions about this matter should be directed to the Plaintiff-physicians’ attorneys who also represent the class of anesthesiologists in the lawsuit. Plaintiffs’ attorneys can be reached at the following address and telephone number:

Landy & Seymour
363 Seventh Avenue, Room 1300
New York, NY 10001-3904
(212) 629-0590

NOTICE OF PAYMENT PURSUANT TO LAWSUIT SETTLEMENT

This is to advise you that you will be receiving payment from Medicare under the terms of the settlement agreement reached in a class action lawsuit, *Furlong v. Thompson*, No. 94 Civ. 4817 (S.D.N.Y.). In the lawsuit, the Plaintiff-physicians sought to challenge the Medicare carriers application of a multiple procedure payment reduction rule (i.e., the so-called “one and one half rule”) to four concurrent invasive monitoring procedures (“CIMPs”), which were performed during 1992 and 1993 by a class of anesthesiologists who declined assignment of the patient-beneficiary’s claim for Medicare payment. The four CIMPs are categorized by Medicare under Healthcare Common Procedure Coding System (“HCPCS”) codes 36620, 36489, 93503, and 93501.

Medicare records indicate that you submitted non-assigned claims for one or more CIMPs that qualify for settlement payments. In accordance with the settlement agreement, Medicare will be paying you 50% of the increase in the “limiting charge” for a qualifying CIMP, where the higher limiting charge results from the carrier’s reversal and elimination of its prior application of the one and a half rule to the CIMP. Please note that the settlement agreement imposes an important condition on the receipt of each settlement payment: the physician is prohibited from billing the Medicare patient-beneficiary (or beneficiary’s heirs, assigns, or agents) any additional monies for, or related to, the qualifying CIMP.

Any questions about this matter should be directed to the Plaintiff-physicians’ attorneys who also represent the class of anesthesiologists in the lawsuit. Plaintiffs’ attorneys can be reached at the following address and telephone number:

Landy & Seymour
363 Seventh Avenue, Room 1300
New York, NY 10001-3904
(212) 629-0590

Dear Dr. (Last Name of Physician):

You are eligible to receive a payment from Medicare under the Furlong lawsuit settlement agreement. Our records indicate that you are currently enrolled as a member of a group practice or other entity that receives Medicare payments on your behalf. Medicare carriers have been directed by the Centers for Medicare and Medicaid Services to issue Furlong settlement payments in the name of the physician who performed the service that qualifies for the settlement payment. In order for (your carrier name) to issue the Furlong settlement check in your name you will need to complete and return the enclosed Medicare enrollment form as soon as possible.

If you want your Furlong settlement check issued to some other Medicare enrolled entity, you will not need to complete and return the enclosed enrollment form. However, (your carrier name) will need your written authorization to issue your Furlong settlement check to some other Medicare enrolled entity. You may do so by sending us a letter addressed to (carrier to fill in) and containing the following information: 1) Your request that the Furlong settlement check be made payable to someone other than yourself, 2) The name and address of the Medicare enrolled entity that your Furlong settlement check should be made payable to, and 3) The Medicare billing number of that enrolled entity. Once (carrier name) receives this information from you a check will be issued.

If you have questions regarding this request, please contact (name of carrier contact person) at (phone number of contact person).

(Name)
(Title)

Enclosure: (Enrollment form)

Furlong Settlement Report

Carrier: (Carrier name and CMS assigned contractor number.)

Report Month: (Enter the calendar month for which you are reporting. Also, if this is your final report enter “(final report)” after the report month indicated (e.g., October 2002 (final report)).

Carrier Contact: (Enter the name, phone number and e-mail address of your contact person for questions relating to the report.)

A. Furlong Settlement Payments Effectuated (Report monthly and year-to-date data on the number of physicians and settlement dollars paid.)

1. Physicians Paid: (The number of physicians issued Furlong settlement payments during the report month.)

2. Payout Amount: (The settlement dollars paid (i.e., dollar amount of the checks issued) during the report month.)

3. Physician’s Paid Year-to-Date (YTD): (Number of physicians paid YTD. This is the sum of the current months “Physicians Paid” number in A.1. plus the “Physicians Paid YTD” number from section A.3. of the prior months report. For the initial report the monthly and YTD figures will be the same.)

4. YTD Paid Amount: (Settlement dollars paid YTD. This is the aggregate amount of the current month’s payout (A.2.) plus the YTD payments (A.4.) from the prior month’s report. For the initial report the monthly and YTD amounts will be the same.)

B. Furlong Settlement Payments Under Investigation (Report the number of physicians and related dollar amounts that have not been issued and are under investigation/development as of the end of the report month.)

1. Physicians Under Settlement Payment Development: (The number of physicians remaining to be paid as of the end of the report month. If an issued check was returned during the report month, add the physician back into B.1. until a final disposition is determined.)

2. Amount Payable to Physicians Still Under Settlement Payment Development: (The dollars payable to physicians remaining to be paid as of the end of the report month. If an issued check was returned during the report month, add the dollars back into B.2. until a final disposition is determined.)

C. Furlong Settlement Payments That Cannot Be Effectuated: (Report monthly and YTD data on the number of physicians and dollars that have not yet been paid because the physician cannot be located, is deceased, or for other valid reasons that have been approved by CMS.)

1. Physicians: (During the report month the number of physicians you determine cannot be paid for valid reasons (e.g., unable to locate, deceased, other). Do not include data included in section B above.) Attach a list of physician names, UPINs, PINs and payment amounts that, during the report month, you determined could not be effectuated and the reason (e.g., Unable to Locate (UTL), deceased, other.).

2. Amount Payable: (The settlement dollars you determine during the report month that cannot be paid for valid reasons. Do not include amounts reported in section B above.)

3. YTD Physicians: (The number of physician's YTD that you've determined cannot be paid. This will be the sum of the current month "Physicians" number in C.1. above plus the "YTD Physicians" figure in C.3. of the prior month's report. The monthly and YTD figures for the initial report will be identical.)

4. YTD Amount: (The settlement dollars that cannot be paid for valid reasons. This will be the sum of the current months "Amount Payable" in C.2. above plus the "YTD Amount" from section C.4. of the prior months report. The "Amount Payable" and "YTD Amount" for the initial report will be identical.)