

INFORMATION ABOUT LIENS FOR FLINT SETTLEMENT CLAIMANTS
Provided by Special Master's Office

- Under Federal law, settlements for personal injury **MUST** be reported to Medicare so that Medicare can determine whether they have a lien on the settlement award to the injured person. A lien arises if the injured person is Medicare “entitled” and if Medicare paid for medical services that involve the injury claimed in the lawsuit/settlement. *See* Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b). Federal law and the ASA require that such liens be resolved. The ASA also requires that liens asserted by private health insurers and other governmental agencies (i.e., military insurance) must be resolved. The ASA and applicable law prohibit payment to claimants affected by potential liens until such liens are resolved.
- The Court appointed a lien administrator to resolve liens – which is the standard procedure in any large settlement like the Flint water settlement. The lien administrator handling all claims generally is able to negotiate a more favorable resolution than individual claimants.
- Some claimants may not realize that a lien applies to their claim. In order to resolve Medicare liens, the settlement administrator must submit each approved claimant’s identification information (name, Social Security number, date of birth) to Medicare. Medicare then determines whether the person is “entitled” to Medicare benefits.
- Why are payments withheld? The lien administrator has advised that it is necessary to hold payments until Medicare and other lienholders agree to a final resolution of the liens.
- What happens if a lien is asserted against my claim? The lien will have to be negotiated to determine a final amount that Medicare or other lienholders will agree to accept. Sometimes liens are waived and then the amount asserted is zero. If the lienholder agrees to a dollar amount of the lien, then that amount must be paid to Medicare or the private insurer and it will reduce the amount of your award. For this reason, the lien administrator is working to achieve the lowest possible lien amount.
- How many payments are being held for this reason? Over half of the claims approved for adult injury are on hold based on liens that have been asserted. Most of those liens relate to Medicare but there are also private insurer liens and some liens based on health care provided to former military personnel. The adult claims with Medicare liens account for approximately 5% of approved settlement claims. Some liens have been asserted against claims filed by individuals who were minors at the time of the water crisis. Overall, including all types of liens identified to date, claims that have to be held from payment because of liens account for less than 10% of the overall population of claims approved for an award.

- Claims that do not have liens are receiving payment – that is, the fact that liens are asserted against certain claims does not affect payment of other claims.
- Liens do not affect property or business claims.
- We were able to resolve all *Medicaid* liens with no payment to the Medicaid providers (managed care organizations), which is a significant benefit to the claimants.
- The Centers for Medicare and Medicaid Services (CMS) resolves liens for Medicare. The administrator of CMS is Dr. Mehmet Oz.
- The lien administrator reports that CMS is likely to negotiate a “group” settlement of Medicare liens instead of asserting liens individually with respect to each entitled claimant, which will also be a benefit to claimants.
- Medicare cannot enter into a final resolution for all the liens until Medicare is advised that it has received Social Security Numbers for all claimants with approved injury claims. Under the ASA, claimants were required to provide Lien Disclosure Forms and provide SSNs as part of the claims process. *See* Amended Settlement Agreement (“ASA”), at ¶¶ 3.19–3.19.3; 3.22; and at Exhibits 2 and 10. In the Order Granting Final Approval of the Settlement, the Court confirmed that “[a] Social Security number for each participant is necessary for the lien procedures” and that “[t]he federal government requires that this information be provided to assure that all government liens due (if any) are paid.” Order Granting Final Approval, *In re Flint Water Cases*, 571 F.Supp.3d 746, 819.
- The claims administrator found that many claims were missing valid SSNs and consequently has had to request this information. The claims administrator has provided multiple notices to counsel (over the past two years) and to individual claimants who either did not provide a full Social Security Number or where the Social Security Number provided turned out to be invalid. Although many have responded, hundreds of approved claims are still missing a valid SSN.
- The lien resolution process that the lien administrator is engaged in is designed to result in the most speedy, cost effective, and efficient resolution for the minority of the population that is affected, and to minimize the amount of the recovery taken against those claimants’ individual settlements.