

10. RECOVERIES – SUBROGATION, THIRD-PARTY CASES

a. Net Loss Reporting

Except as noted below, when there has been recovery of loss due to subrogation, the amount of incurred loss reported must be the net incurred loss, and the amount of paid loss reported should be the net paid loss.

The net incurred loss is the gross incurred loss (i.e., the gross evaluation of the claim prior to any actual or expected recovery on which the award was based, whether the claim is still open or not) minus the amount recovered less recovery expenses. The net paid loss is the gross paid loss minus the amount recovered less recovery expenses. When the allocation of recovery to indemnity and medical is unknown, the net incurred loss must be proportionally split between indemnity and medical losses in the same proportion as the original gross incurred indemnity and medical amounts, and the net paid loss must be proportionally split between indemnity and medical losses in the same proportion as the original gross paid indemnity and medical amounts.

Exception: When the recovery expenses exceed the amount recovered, report the gross incurred loss instead of the net incurred loss and the gross paid loss instead of the net paid loss.

A claim involving subrogation must be reported with Loss Condition Code — Type of Recovery Code 03 (Subrogation-Only).

b. Correction Reporting

When a subrogation recovery is received by the carrier at any point subsequent to the 1st unit report, but prior to the 10th report valuation date, correction report(s) must be filed for prior reports that reflected a total incurred amount higher than the net incurred loss.

If a correction is required:

Report the net incurred indemnity loss amount if it is lower than the originally reported amount.

Report the net incurred medical loss amount if it is lower than the originally reported amount.

Report the net paid indemnity loss amount if it is lower than the originally reported amount.

Report the net paid medical loss amount if it is lower than the originally reported amount.

c. Recovery by Employee or His/Her Dependents

i.

For cases involving recovery by the injured employee or his/her dependents, the net incurred loss must be:

- the deficiency, if any, between the outstanding compensation provided by the New York State Workers' Compensation Law and the net amount of recovery actually collected by the claimant, and

- any other incurred indemnity and medical losses not recovered by the carrier's lien on the proceeds of the claimant's third-party recovery or by a third-party action pursued by the insurance carrier.

ii.

When recovery by the injured worker or his/her dependents relieves the carrier of the liability for further compensation benefits as, for example, in the case involving recovery without the consent of the carrier, or where the recovery exceeds all future compensation benefits due, the net incurred loss must be the sum of all amounts paid and any amounts payable into any special fund, less the net reimbursements, if any, received from the claimant or third party. Where reimbursement is received by the carrier, and the allocation of the reimbursement to indemnity and medical is not known, the net liability incurred must be apportioned to indemnity and medical in the same proportion as existed in the amounts paid and/or payable by the carrier prior to the recovery.

When the carrier is (1) relieved of liability for death benefits to dependents who have made a compromise settlement with a third party without the consent of the carrier, but (2) is liable for payments to the dependents not involved in such settlement, the sum of the net liabilities for dependency groups (1) and (2), each calculated separately in accordance with the forgoing rules, must be added to any other indemnity and medical incurred and paid loss amounts to determine the total net liability for the case.

d. Subrogation Reporting Additional Information and Examples

Reporting Example #1

The carrier submitted a claim on a 1st and 2nd unit statistical report, and a subrogation recovery was received between the 2nd and 3rd reports.

A 1st unit report was submitted to include a claim with the following information:

- Claim Number: 12345
- Incurred Indemnity: \$15,000; Incurred Medical: \$15,000
- Paid Indemnity: \$12,000; Paid Medical: \$13,000

As of the 2nd unit report, the claim remained open, and the updated loss information was as follows:

- Incurred Indemnity: \$35,000; Incurred Medical: \$25,000
- Paid Indemnity: \$15,000; Paid Medical: \$20,000

Between the 2nd and 3rd unit reports, the carrier received a subrogation recovery of \$25,000, and the carrier's subrogation expenses were \$3,000. The subrogation recovery and related expenses were allocated 60% for indemnity and 40% for medical.

The carrier must first determine whether correction reports are required, and if so, which report levels need to be corrected, by calculating the net incurred loss.

The net incurred loss represents the latest reported total incurred loss (Incurred Indemnity \$35,000 + Incurred Medical \$25,000 = \$60,000), less the subrogation recovery net of the subrogation expenses (\$22,000 = \$25,000 - \$3,000):

$\$60,000 - (\$25,000 - \$3,000) = \$38,000$ (net incurred loss).

In this example, the determination whether correction reports are required for each report level is as follows:

- 2nd unit report – Correction required because the calculated \$38,000 net incurred loss is less than the 2nd report total incurred loss of \$60,000
1st unit report – Correction not required because the calculated \$38,000 net incurred loss is greater than the 1st report total incurred loss of \$30,000

The next step is to perform the loss allocation between indemnity and medical. Based on the 60% for indemnity and 40% for medical subrogation and expense allocation, calculations are performed as follows:

- Indemnity – 60% of the subrogation recovery (net of recovery expenses) is $60\% \times \$22,000 = \$13,200$
- Medical – 40% of the subrogation recovery (net of recovery expenses) is $40\% \times \$22,000 = \$8,800$

The loss allocation of the net loss amounts at 2nd report is calculated as follows:

- Net Incurred Indemnity: $\$35,000 - \$13,200 = \$21,800$
- Net Paid Indemnity: $\$15,000 - \$13,200 = \$1,800$
- Net Incurred Medical: $\$25,000 - \$8,800 = \$16,200$
- Net Paid Medical: $\$20,000 - \$8,800 = \$11,200$

In addition to reporting the revised loss amounts on the correction report, the appropriate Loss Condition Code — Type of Recovery Code must be reported as Code 03 (Subrogation-Only).

Reporting Example #2

The carrier submitted a claim on the 1st, 2nd, and 3rd unit statistical reports, and, as of the 3rd report, the claim was closed. Following the 3rd report, a subrogation recovery was received by the carrier.

A 1st unit report was submitted to include the claim with the following information:

- Claim Number: 23456
- Incurred Indemnity: \$20,000; Incurred Medical: \$30,000
- Paid Indemnity: \$18,000; Paid Medical: \$20,000
- Claim Status Code 0 (Open)

As of the 2nd unit report, the claim remained open, and the updated loss information was as follows:

- Incurred Indemnity: \$35,000; Incurred Medical: \$40,000
- Paid Indemnity: \$22,000; Paid Medical: \$28,000
- Claim Status Code: 0 (Open)

As of the 3rd unit report, the claim was closed, and the updated loss information was as follows:

- Incurred Indemnity: \$45,000; Incurred Medical: \$55,000
- Paid Indemnity: \$45,000; Paid Medical: \$55,000
- Claim Status Code: 1 (Closed)

Following the 3rd report, the carrier received a subrogation recovery of \$45,000, and the carrier's subrogation expenses were \$3,000. The subrogation recovery and related expenses were allocated 30% for indemnity and 70% for medical.

The carrier must first determine whether correction reports are required, and if so, for which report levels, by calculating the net incurred loss.

The net incurred loss represents the latest reported total incurred loss (Incurred Indemnity \$45,000 + Incurred Medical \$55,000 = \$100,000), less the subrogation recovery net of the recovery expense (\$42,000 = \$45,000 - \$3,000):

$$\$100,000 - (\$45,000 - \$3,000) = \$58,000 \text{ (net incurred loss)}$$

In this example, the determination of correction reports for each report level is as follows:

- 3rd unit report—Correction required because the calculated \$58,000 net incurred loss is less than the 3rd report total incurred loss of \$100,000
- 2nd unit report—Correction required because the calculated \$58,000 net incurred loss is less than the 2nd report total incurred loss of \$75,000
- 1st unit report—Correction not required because the calculated \$58,000 net incurred loss is greater than the 1st report total incurred loss of \$50,000

The next step is to perform the loss allocation of the subrogation recovery between indemnity and medical. Based on the 30% for indemnity and 70% for medical subrogation and expense allocation, calculations are performed as follows:

- Indemnity—30% of the subrogation recovery (net of recovery expenses) is $30\% \times \$42,000 = \$12,600$
- Medical—70% of the subrogation recovery (net of recovery expenses) is $70\% \times \$42,000 = \$29,400$

For the 3rd report correction, the reportable net paid and incurred losses are calculated as follows:

- Net Incurred Indemnity: $\$45,000 - \$12,600 = \$32,400$
- Net Paid Indemnity: $\$45,000 - \$12,600 = \$32,400$
- Net Incurred Medical: $\$55,000 - \$29,400 = \$25,600$
- Net Paid Medical: $\$55,000 - \$29,400 = \$25,600$

In addition to reporting the revised loss amounts on the correction report, the appropriate Loss Condition Code — Type of Recovery Code must be reported as Code 03 (Subrogation-Only).

It was determined above that a second report correction is required. The net incurred loss for the 2nd unit report is determined by comparing the originally reported loss amount at 2nd report to the net losses as of the 3rd report:

- Net Incurred Indemnity: Report \$32,400 because it is less than the \$35,000 reported on the 2nd report originally.
- Net Paid Indemnity: Report \$22,000 (unchanged because it is less than the \$32,400 net paid amount at 3rd report)
- Net Incurred Medical: Report \$25,600 because it is less than the \$40,000 reported on the 2nd report originally.
- Net Paid Medical: Report \$25,600 because it is less than the \$28,000 reported on the 2nd report originally.

Because the Paid Indemnity was less than the calculated Net Paid Indemnity, the Paid Indemnity on the 2nd report level remains at \$22,000.

The above example shows this claim reported on a correction to a 2nd unit report to include the revised loss amounts and Type of Recovery Code 03. Because the claim was still open, the Claim Status remains 0 (Open).