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## California Calls for Reform: The Medicare Secondary Payer Enhancement Act

Earlier in 2010, the California Legislature enacted Assembly Joint Resolution 42, authored by Assembly Insurance Committee Chair Jose Solorio. This resolution, which had broad support from the business community, advocates for injured workers, and the insurance industry, including IBA West, urged the Congress to pass H.R. 4796, the Medicare Secondary Payer Enhancement Act (MSPEA) of 2010.

This federal legislation, H.R. 4796, reforms the process by which Medicare enforces its secondary payer rights against liability and workers' compensation insurers, self-insured employers, and others. While the clock ran out for Congress to send H.R. 4796 to the President in 2010, it will be reintroduced in the 112th Congress in 2011.

H.R. 4796 is supported by the Medicare Advocacy Recovery Coalition (MARC), a broad based coalition that is seeking to make the Medicare Secondary Payer (MSP) process more fair and efficient. Its goal is to enable insurers and self-insured employers to promptly settle claims while securing timely resolution of their Medicare responsibilities. Also, H.R. 4796 establishes an appeal process so that non-group health plans can resolve disputes with Medicare without resorting to litigation and clarifies the statute of limitations applicable to Medicare's enforcement actions under the MSP laws.

Over the past several years, Medicare has become increasingly aggressive in its efforts to collect payments it has already made that are the responsibility of others ("conditional payments") and to require insurers and self-insured employers to protect Medicare's interests when settling claims in which future medical payments are compromised and released. Federal law requires a portion of such settlements to be set aside so that the cost of medical treatment for the injury will not be borne by Medicare when the injured worker becomes Medicare eligible. These arrangements are called "Medicare Set Asides" or MSAs.

Under current law, Medicare must approve a settlement valued at \$25,000 or more when the injured worker is a Medicare beneficiary or may become a Medicare beneficiary within 30 months of the settlement date. This includes individuals who are receiving Social Security Disability Insurance (SSDI) benefits. There is a growing body of research demonstrating that the expense and delays in securing Medicare's approval of settlements are adding significant costs to the workers' compensation system. As the working population continues to age, these costs will only increase.

Beginning on January 1, 2011, insurers, self-insured employers, and TPAs who have registered with Medicare as “Responsible Reporting Entities” (RREs) are going to have to submit substantial workers’ compensation claims information to Medicare. An RRE is the entity paying the benefits to the injured worker or, in the case of liability insurance, the accident victim. RREs can be insurers, self-insured employers, or third-party administrators who have registered with Medicare. The penalty for failing to report to Medicare is \$1,000 per day per claim. With this data, Medicare will expand its collection efforts.

Supporting MSP reform in Congress should be high on every insurance professional’s list of public policy goals for 2011. H.R. 4796 had considerable bi-partisan support in the House of Representatives this year and its reintroduction in 2011 will build on this momentum. Pacific Compensation, which sponsored AJR 42, supports the efforts of the MARC Coalition and will continue to work with them in Washington, D.C. to bring about sensible changes to the MSP law while protecting the financial integrity of the Medicare Trust. We are also grateful to IBA West for its support of AJR 42 and look forward to working with you on this important issue next year. To learn more about reform activities in Congress and about insurer and self-insured employer obligations under the MSP laws, visit the MARC Coalitions website at <http://www.marccoalition.com>.

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