



Medicare Advocacy Recovery Coalition

MEDICARE SECONDARY PAYER ENHANCEMENT ACT OF 2010 (MSPEA)/H.R. 4796
LEGISLATIVE SUMMARY

1. **Revise the Information Flow so that Medicare Secondary Payer (MSP) can be Determined, and Paid, BEFORE Settlement**

The MSPEA would create a pathway for parties involved in a case to either obtain from Medicare a statement of what is owed to the Medicare Trust Fund, or allow beneficiaries and others, based upon a good faith estimate from billing records, to calculate and make MSP payments to the Medicare Trust Fund directly. If payment is made and CMS does not dispute the claim amount within 90 days, it becomes the final MSP amount and the MSP obligation is completed. Alternately, within those 90 days, CMS can dispute the payment amount and pursue resolution through an administrative appeals process.

2. **Right of Appeal**

The MSPEA would give Non-Group Health Plans the same right of appeal through the Administrative Law Judge and federal court system as Group Health Plans enjoy today, to allow all participating parties the right to determine the correct amount of an MSP obligation.

3. **Adopt Sensible MSP Recovery Thresholds**

To eliminate the waste and expense associated with small dollar MSP recoveries, the MSPEA would create a \$5,000 threshold, measured by the settlement or other payment, below which parties are exempt from MSP obligations. This innovation alone will provide thousands of beneficiaries with predictability and finality around their small dollar settlements.

4. **Take Social Security Numbers (SSN) and Health Insurance Card Numbers (HICN) Out of the Reporting Process**

To protect beneficiaries and their privacy rights, the legislation will give CMS one year to adopt a system of reporting without requiring Responsible Reporting Entities – corporations and others that settle with or are found liable to beneficiaries -- to access a beneficiary SSN and HICN and report that data to CMS.

5. **Set a Limitations Period for MSP Claims**

The MSPEA will clarify that the three year period contained in Section 1395y(b)(2)(B)(iv) is a statute of limitations for all MSP claims, and clarify that the government has a three year period to assert its claim from the date of a Section 111 report.

6. **MMSEA §111 Reporting Revisions**

The MSPEA will correct the current Section 111 penalty provisions to provide the government with enforcement discretion and ensure proportional penalties, and require the Department of Health and Human Services (HHS) to develop safe harbors for meeting reporting requirements.

7. **User Fee**

To offset the cost of the legislation, and to streamline the current bureaucracy, the legislation will impose a \$30 per claim processing fee for each expedited voluntary payment or request for a final demand of conditional payment to facilitate the expedited process implemented by the legislation.

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