

The Strengthening Medicare and Repaying Taxpayers (SMART) Act – S. 1718/H. R. 1063

HOW THE SMART ACT BENEFITS MEDICARE BENEFICIARIES

- **Safeguards Beneficiaries' Personal Information:** Under the current Medicare Secondary Payer (MSP) reporting system, the Centers for Medicare and Medicaid Services (CMS) requires beneficiaries to provide sensitive personal information, such as Social Security numbers (SSNs) and Medicare Health Insurance Claim Numbers (HICNs), to the parties against whom they are pursuing claims. Yet the Department of Health and Human Services (HHS) and CMS currently sponsor significant educational campaigns to encourage beneficiaries *not* to share their SSNs/HICNs, in order to fight Medicare fraud and abuse. Beneficiaries are understandably very protective of this information and resistant to providing it to opposing parties in lawsuits. The SMART Act will reduce the risk that beneficiaries' personal information could become compromised by requiring CMS to utilize an alternative means of identifying beneficiaries.
- **Speeds Settlements:** The current MSP system delays settlements when beneficiaries are injured. Neither the beneficiary nor the settling party knows how much money Medicare will expect in reimbursement. Without this critical piece of information, settlements are delayed indefinitely as the parties try to determine how much is owed to Medicare. The SMART Act overcomes this hurdle by providing the MSP conditional payment amount *before* the settlement occurs, allowing the parties to take that amount into account as they finalize their agreements.
- **Avoids Unnecessary Litigation:** Third parties are often hesitant to settle with beneficiaries without a trial on the merits, as Medicare may come back to request additional repayment beyond the settled amount. While almost all companies would prefer to settle claims, even when they do not believe they are at fault, MSP rules may force cases to trial. When claims that would otherwise be settled promptly go through litigation, both the beneficiary and the Medicare Trust Fund may fail to receive any compensation. The SMART Act simplifies the MSP process to allow all of the parties involved to make decisions regarding settlements based on the merits of the claim rather than administrative requirements.
- **Protects Beneficiaries' Access to Justice:** Given the uncertainties and complexities of the current MSP system, plaintiffs' attorneys are increasingly hesitant to take on Medicare beneficiaries as clients in liability and workers compensation cases. By ensuring that Medicare beneficiary claims do not face significant hurdles, the SMART Act ensures that beneficiaries can continue to find quality legal representation willing and able to undertake their claims.