

## **Changes from the Medicare Secondary Payer Enhancement Act (MSPEA - H.R. 4796 in the 111<sup>th</sup> Congress)**

### **Focus on Efficiency**

The style and language in the new bill has been revised to clarify the legislation's intent to streamline the bureaucracy of the Medicare Secondary Payer (MSP) process and make it more efficient for all parties involved. While this has always been the focus, the bill text has been refined to emphasize this purpose.

### **Replaces Dual-Track System with Single, Simplified System for CMS to Calculate the MSP Repayment Amount**

The new bill eliminates the dual-track system proposed in H.R. 4796 for early resolution of payments owed to the Medicare Trust Fund. Instead of two options, the revised legislation improves a one-step process for requesting Medicare to provide a definitive statement of amounts owed, so that the parties can quickly conclude settlement and repay the Trust Fund. Under the new legislation, parties "reasonably expecting" to settle may demand from CMS a statement of "conditional payments" that they owe the Trust Fund. The Agency then has 65 days to inform the parties of the MSP conditional payment amount owed, so that the parties can settle. Like H.R. 4796, the new legislation allows parties a right of appeal to engage with CMS if there are questions.

### **Adjusts the Communication Process to Increase Efficiency for All Parties**

Under H.R. 4796, if CMS missed the 60-day window for providing information, it lost its claim. By contrast, the new legislation provides that if CMS misses the 65-day window, the settling parties must send a second "cure" notice requesting the information. CMS then has 30 additional days to provide the information before the claim is forfeited. The Agency may avoid losing the claim if it proves "exceptional circumstances," defined as being justified as an excuse for up to one percent of the claims.

### **MSP Threshold Set Annually by the CMS Chief Actuary to Ensure that Medicare Is Not Spending More On a Claim Than It Stands to Collect**

H.R. 4796 included a flat \$5,000 threshold, below which settlements were exempt from MSP repayment and reporting. To offset the cost, H.R. 4796 also contained a "user fee" for expedited settlements. Under the new legislation, the threshold will be directly related to CMS' cost of collection to ensure that the government is not spending more than it will collect on any given claim. More specifically, each year the CMS Actuary will calculate the cost of collection for MSP recoveries from liability (including self-insurance), workers compensation, and no-fault claims. The Actuary will then estimate the average settlement that would yield the cost of recovery in an MSP reimbursement, and that settlement amount will become the threshold. By doing so, the government will not spend more than it could collect on any claim, and thousands of small dollar claims will be able to settle more efficiently, helping beneficiaries and industry.