

The Problem:

Existing Medicare Secondary Payer (MSP) rules are inefficient, unnecessarily delay settlements and waste government, beneficiary, and stakeholder resources.

- MSP laws and regulations were poorly understood and rarely enforced for many years. A provision in the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) requires insurers to report to the Centers for Medicare and Medicaid Services (CMS) every settlement or other payment made to a beneficiary. A penalty of \$1,000 *per day per claim* applies for failure to report properly. Because the reporting and reimbursement obligations are so complicated, and CMS does not provide a repayment amount until after parties have settled, cases involving beneficiaries are difficult if not impossible to settle. Beneficiaries and other stakeholders are left confused and frustrated.
- ***The following hypothetical scenario illustrates the current challenges*** - Imagine Mrs. Smith, a 76-year-old beneficiary, is struck by an Acme truck while crossing a street, and is hospitalized with \$50,000 in health care costs. Medicare pays for her treatment. Two years later Mrs. Smith sues Acme, which is insured by Choice Insurance. Choice and Acme deny Acme was responsible, but want to settle the case, and Mrs. Smith, on the advice of her lawyer, is prepared to accept \$120,000 on her \$1 million claim. Once the settlement is paid, however, existing MSP law will turn Medicare's \$50,000 payment into a "conditional payment." The Medicare Trust Fund, now the "secondary payer," is entitled to reimbursement from Mrs. Smith or directly from Choice or Acme (even though they have already paid). Due to the risk of having to pay *twice*, Acme and Choice are unwilling to actually settle with Smith without resolving the MSP issue first. Further complicating the situation, neither Smith, Acme nor Choice can determine exactly how much the Trust Fund is owed, because there is no mechanism for Medicare to provide that information before settlement. Even if they determine the amount, they have no way to repay the Trust Fund at the time of settlement

The Solution:

Make the system more efficient and less bureaucratic by strengthening Medicare and repaying taxpayers.

- Empowering Medicare to provide settling parties with the amount of their MSP repayment obligation *during* the settlement process, will allow taxpayers to settle quicker, and repay the Medicare Trust Fund faster.

The Benefits:

MSP Reform will reduce bureaucratic red tape that interferes with beneficiaries' ability to settle claims promptly, make government more efficient and remove unreasonable burdens that currently waste limited resources.

- MSP Reform will provide a more affordable and less intrusive MSP system that protects beneficiaries and the Medicare Trust Fund, but does not waste limited judicial and other resources or needlessly confuse parties trying to settle a claim resulting from an injury to a beneficiary.
- MSP Reform will also eliminate the required use of Social Security Numbers (SSNs) and Health Insurance Claim Numbers (HICNs) in the reporting process, create a basic right of appeal for all parties to resolve a CMS MSP determination, clarify the statute of limitations, and require the CMS Actuary to determine a threshold below which the recoveries are so small it makes no sense to apply the complex MSP laws.