

## **HOW WILL THE SMART ACT IMPROVE EFFICIENCY IN THE MEDICARE SECONDARY PAYER (MSP) SYSTEM?**

### **Section 1:**

#### **The SMART Act Improves Efficiency by Informing Settling Parties of their MSP Amount *Before* Settlement.**

Many claims involving Medicare beneficiaries today cannot settle because the parties cannot determine their respective obligations to reimburse the Medicare Trust Fund. The result is a lose-lose-lose for the beneficiary, the defendant, and the Medicare Trust Fund – all because under current law, Medicare has no pathway to provide the amount due the Trust Fund for ‘conditional payments’ – those payments previously made by Medicare for the injury that will be covered by the settlement.

The SMART Act will fix this problem by creating a process for Medicare to advise parties in the process of settling, *before* settlement, of how much is owed, so that the parties can appropriately allocate and resolve their Medicare obligations *during* settlement. By requiring Medicare to provide the amount due within 65 days of a request, the settling parties will know how much money has to be set aside for Medicare, and factor that amount into their final settlement. This simple change will eliminate uncertainty and help parties settle these claims much faster so that Medicare *and* the beneficiary can be reimbursed more quickly. The SMART Act will also provide all settling parties with a right of appeal if they disagree with Medicare’s repayment request, or if they believe Medicare has made a mistake.

### **Section 2:**

#### **The SMART Act Increases Medicare’s Efficiency by Ensuring that the Government Does Not Spend More Money Pursuing a MSP Claim Than it will Actually Recover from That Claim.**

Many claims settled with Medicare beneficiaries involve very small total payments. For example, a company may offer a beneficiary \$100 in gift cards or even just \$20 because it is the right thing to do when a customer or worker has had a bad experience. No matter how small the amount, the MSP system still applies, and Medicare seeks to collect the claims. There is a point, however, at which Medicare will pay more in costs than it will ever collect. For example, if it costs Medicare \$350 in contractor and staff time to collect any single claim, Medicare should exempt from the law every case likely to yield \$350 or less in MSP collections. Yet, Medicare is pursuing cases for \$1.59!

Medicare should not waste taxpayer money pursuing MSP claims when the amount recovered will not even pay for postage required to request the repayment. The SMART Act will bring common sense to the MSP system and introduce a threshold below which MSP will not apply. The threshold will be set (annually by the CMS Actuary) at the amount of settlement likely to yield an MSP collection at or below the government’s recovery cost. This will not only *save* the government money, but will allow Medicare beneficiaries to settle small value cases without being subjected to extensive and costly MSP reporting requirements. Most importantly, this change will allow the MSP system to maximize its returns without wasting the resources of taxpayers, Medicare beneficiaries, or stakeholders.

# *The Strengthening Medicare and Repaying Taxpayers (SMART) Act*

## **Section 3:**

### **The SMART Act Will Protect Stakeholders That Make Good Faith Efforts to Comply with Medicare's Complex MSP Reporting Requirements.**

The current MSP system requires companies to report extensive amounts of information any time they settle a claim involving a Medicare beneficiary. The reporting process is technologically complex; because the system is still very new, CMS is still experiencing many problems and Medicare's computer systems shut down or reject claims for even minor errors. Unfortunately, the MSP statute does not provide any leeway for companies that make good faith efforts to report but experience problems during the process, and instead poses a \$1,000 per day per claim penalty for late reporting.

The SMART Act will correct this inequity by creating enforcement discretion of *up to* \$1,000 per day per claim in penalties, and directing the Department of Health and Human Services (HHS) to establish safe harbors that will provide companies with protection for good faith compliance efforts. With input from stakeholders, the HHS Office of Inspector General will have the ability to define situations that do not merit penalties, thereby providing companies the protection they need to work with Medicare to get the reporting system right.

## **Section 4:**

### **The SMART Act Protects Medicare Beneficiary's Social Security Numbers and Medicare Numbers**

In order to comply with reporting requirements, companies *must* obtain the social security numbers (SSNs) or Health Insurance Claims Numbers (HICNs, also known as the "Medicare Number") of beneficiaries with whom they settle claims. Beneficiaries are understandably very resistant to providing this sensitive personal information, and companies do not want to be forced to collect and maintain these numbers. With ever increasing concerns about identity theft and Medicare fraud, the government should not require individuals to disclose this information to everyone that they settle a claim with.

This legislation will protect Medicare beneficiaries' sensitive personal information by directing Medicare to identify an alternative method of identifying individuals (such as the last four digits of an SSN) for the purpose of MSP reporting.

## **Section 5:**

### **The SMART Act Will Provide Medicare Beneficiaries and Stakeholders Certainty and Finality By Establishing a Statute Of Limitations for All MSP Claims.**

The current language of the MSP statute provides a statute of limitations to some types of MSP claims, but not for all claims. Statutes of limitations are a core principle in the American justice system, and provide much needed certainty and finality after a reasonable amount of time has passed since a claim has been settled. Numerous court cases have addressed this question, with inconsistent answers. The legislation will clarify that the three-year MSP statute of limitations (measured from the date of reporting) covers all MSP claims.