

United States Senate

WASHINGTON, DC 20510

July 14, 2014

The Honorable Marilyn Tavenner
Administrator
Center for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Tavenner:

The Strengthening Medicare and Repaying Taxpayers (SMART) Act, signed into law (P.L. 112-242) in January 2013, enacted several important changes to strengthen and protect the Medicare program by ensuring greater reliability and efficiency of Medicare reimbursements. However, we are concerned that CMS has delayed implementing several aspects of the SMART Act, raising concerns for entities responsible to comply with the statute and further delaying repayments of taxpayer dollars to the Medicare Trust Fund.

As you know, under the Medicare Secondary Payer (MSP) system, if a Medicare beneficiary is injured by a third party and a settlement is pursued as a result of that injury, the third party is responsible for paying for the individual's medical expenses. If Medicare, the "secondary payer", pays any of the costs associated with the injury, it is entitled to reimbursement from the third party. The SMART Act aimed to correct numerous issues with the MSP system, including setting a clear statute of limitations on MSP claims, providing a safe harbor to protect companies who exert a good faith effort to comply, creating a process to allow Medicare to disclose MSP information, and providing identity theft and fraud protections.

Section 201 of the Law required the Agency to adopt by notice and comment rulemaking an "expedited portal" that would allow a Medicare beneficiary settling a claim with a third party to obtain from CMS a "final conditional payment" statement during the settlement process, so that responsible parties could reimburse CMS at the time of settlement, rather than wait months following the settlement for the Agency to calculate the amount due and serve notices upon the settling parties. The intent of this provision was not only to make the process more efficient, but to return money to the Medicare Trust Fund faster and more efficiently.

We understand that rather than proceed through notice and comment rulemaking, CMS chose in September 2013 to issue an interim final rule in which it announced that the portal would only become operational in 2016 due to data security concerns. However, since the interim final rule was issued, no changes have been made to the temporary website that the Agency has created in lieu of the portal called for by Congress.

While we appreciate the Agency's concerns over data privacy, every month of delay in establishing the online portal costs tens of millions of dollars in delayed repayments and lost

settlements. We urge you to complete the development of a full and robust portal, to not only enhance Medicare recoveries, but to ease compliance for regulated entities and beneficiaries.

Furthermore, section 202 of the Law called upon CMS to establish certain “thresholds” for liability claims below which claims would be exempt from the MSP process, and to report to the Congress the appropriate thresholds that should apply in workers compensation, no fault and mass tort cases. While in late February CMS announced that it was increasing to \$1,000 the “threshold” for liability settlements, as required by the law, to date no report has been received that calculates thresholds for workers compensation and no fault claims. We request that CMS complete the report to Congress, as required in the law.

Finally, the SMART Act included safe-harbors to protect stakeholders who make good faith efforts to comply with Medicare’s complex MSP reporting process. The Act safeguards Medicare beneficiaries by eliminating the required use of their full SSNs in the MSP reporting process. In late 2013 the Agency issued an Advanced Notice of Proposed Rule addressing both the amount of penalties and the safe harbors that it is obligated to promulgate related to the MSP reporting requirements. Since that time, however, the Agency has not moved forward with a Proposed Rule, much less a Final Rule on the issue. Further, although the Agency was given until July 10, 2014 to eliminate the use of full SSNs, CMS has made no announcements related to that change which is due to occur in the next several weeks. Given the importance of the reporting process, and the amount of effort that the Agency has expended on the system and has asked the regulated community to expend on the system, we would urge CMS move forward promptly with the full rulemaking process on the safe harbors. In addition, we would appreciate that CMS announce to beneficiaries and the regulated community the elimination of full SSNs in the reporting process.

The Medicare Secondary Payer program is an important tool to ensure the ongoing health of the Medicare Trust Fund today and for generations to come. We all share an interest in making sure that the MSP program is efficient, functional, and cost-effective. We urge CMS to adhere to the statutory requirements of the SMART Act and issue the necessary regulatory guidance to enable regulated entities and beneficiaries to comply with the statutory changes and ensure taxpayer dollars are protected.

We look forward to your response.

Sincerely,



Rob Portman
United States Senator



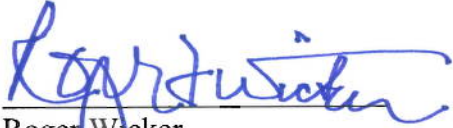
Richard Burr
United States Senator



Sherrod Brown
United States Senator



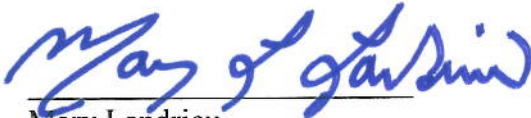
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