

Congress of the United States
Washington, DC 20515

February 19, 2016

The Honorable Andrew Slavitt
Administrator
Center for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Administrator Slavitt:

Thank you for your December 7, 2015 Memorandum regarding the SMART Act Section 202 computation of annual liability insurance (including self-insurance). I appreciate your efforts to keep the Congress and our offices informed of your efforts to comply with the SMART Act, to fulfill the legislation's promise to improve the Medicare Secondary Payer (MSP) program for Medicare beneficiaries, the Trust Fund, and all other affected parties.

Your December report (dated September 2015), raises several questions about how CMS is complying with the requirements of Section 202. So that Congress can have a better understanding of exactly how CMS is complying with the requirements of the law, I request responses to the following questions related to your report.

1. Timing of Calculations. Section 202 of the SMART Act requires the Secretary, “[n]ot later than November 15 before each year,” to publish the applicable threshold “for that year.” In other words, on November 15, 2014, CMS was to publish the applicable threshold for 2015, and on November 15, 2015, it was to publish the applicable threshold for 2016. By doing so, Congress intended to have all settling parties know, and be able to work with, the applicable threshold in effect for that calendar year.

CMS appears to be not in compliance with the time requirements. Although the first computation should have been published on November 15, 2013, notice was only published on February 28, 2014 for the calendar 2014 year setting the threshold at \$1,000, based upon a \$335 average collection cost.^[1] No notice was published in November 2014 for 2015, but instead, on October 2015 a second notice was published maintaining the \$1,000 threshold for 2015 based upon a \$420 collection cost.^[2] It is unclear what the 2016 threshold is.

The most recent notice states: “In 2013, as an annual requirement of section 202 of the Act, CMS reviewed all of the costs related to collecting data and determining the amount of Medicare’s

^[1] <https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Coordination-of-Benefits-and-Recovery-Overview/Non-Group-Health-Plan-Recovery/Downloads/Computation-of-Annual-Liability-Insurance-Including-Self-Insurance-Settlement-Recovery-Threshold.pdf>

^[2] <https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Coordination-of-Benefits-and-Recovery-Overview/Non-Group-Health-Plan-Recovery/Downloads/Computation-of-Annual-Liability-Insurance-Including-Self-Insurance-Settlement-Recovery-Threshold-2015.pdf>

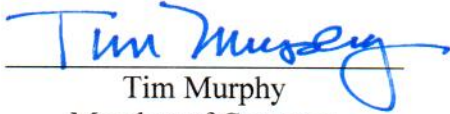
recovery claim. As a result of this analysis, CMS calculated a revised threshold for physical trauma-based liability insurance settlements. Effective January 1, 2014, CMS established a single threshold for these cases, where settlements of \$1000 or less do not need to be reported and Medicare's conditional payment amount related to these cases did not need to be repaid. In 2014, CMS reviewed current costs related to collecting data and determining the amount of Medicare's recovery claim. For 2015, CMS has determined that it will maintain the current single threshold for these cases, where settlements of \$1000 or less do not need to be reported and Medicare's conditional payment amount related to these cases does not need to be repaid." Yet, based upon the actual notices, the CMS statements do not appear accurate.

We request all documents related to the "notices" referenced in CMS's statement, quoted above, as well as a clear explanation of why CMS has not met the Section 202 statutory deadlines. We also ask CMS commit to meet the statutory deadlines in 2016 and beyond.

2. Cost Calculation: Section 202 requires CMS to calculate the threshold based upon "the estimated cost of collection incurred by the United States (including payments made to contractors)..." This language requires CMS to estimate the costs of collection by including both the Agency's costs (including staff time, computer costs, and other costs) *and* contractor costs. However, the Report you provided indicates that CMS is only using its contractor costs, and has not properly included the Agency's own costs. Similarly, the calculation is required by statute to be reviewed by the Comptroller General, but it does not appear any such review has occurred. Please provide us a clear statement confirming that the Agency will calculate the threshold using all statutorily required factors, and that the Agency will timely submit the calculations to the Comptroller General so that there is independent review and confirmation of the Agency's calculations.
3. Missing Information: New subsection (D) also requires CMS to submit to Congress each year a Report on "the establishment and application of similar thresholds for such payments for conditional payment obligations arising from worker compensation cases and from no fault insurance cases subject to this section for the year." Congress intended that CMS calculate a similar threshold for workers compensation and no fault cases, and report that figure to us. Yet, CMS has failed to provide us with such figures. Please provide to us the projected threshold limits that would apply to workers compensation and no fault cases, using the complete methodology required by Section 202.
4. Calculation Questions: Finally, we have several questions regarding the calculations that were provided to us. In the September 2015 report you provided to us you indicate that CMS managed approximately 147,000 liability claims in 2014. The chart on page 6, however, indicates that CMS calculated the settlement amount to which the threshold would apply by reviewing approximately 8,000 claims below the \$1,500 settlement amount. We would appreciate clarification as to whether only 8,000 of the 147,000 liability claims that CMS resolved in 2014 were for settlements below \$1,500. If that is not accurate, please provide us a chart of the total number of claims in 2014 that CMS handled for each of the settlement ranges in the chart on page 6.

I would ask that you provide a response by March 4, 2016 to our staff, Scott Dziengelski (Scott.Dziengelski@mail.house.gov) or Elizabeth Stower (Elizabeth.Stower@mail.house.gov). I look forward to your earliest response.

Sincerely,



Tim Murphy
Member of Congress



Ron Kind
Member of Congress