

The Medicare Secondary Payer Act: Is Help on the Way?

In a potentially significant development, Representatives Patrick Murphy (D-PA) and Tim Murphy (R-PA) introduced to Congress on March 9th of this year H.R. 4796, coined the "Medicare Secondary Payer Enhancement Act of 2010."

Current federal law provides that Medicare is a "secondary" payer. The law provides that Medicare can pay a claimant's health care costs. Should a claim or lawsuit be filed, the claimant and the "applicable plan" (i.e., the alleged tortfeasor or carrier) must reimburse Medicare for the amount of benefits paid by Medicare. Claimants and plans are burdened with having to request from Medicare the amount owed, but there is no time in which Medicare is required to respond, and no ability for the claimant or plan to otherwise determine the amount owed.

H.R. 4796 would, if enacted, change the current landscape with respect to Medicare claims in several important respects. First, the bill provides that at any time within 90 days before an anticipated settlement, a claimant and the party/carrier can work together to calculate the amount that they believe is owed to Medicare, and reimburse Medicare that amount. This option allows the parties to "name their price" without having to request the amount owed from Medicare or wait with an open claim file for Medicare to respond. Paying the lien in this manner places the burden on Medicare to then come back to the parties within 75 days with the amount they deemed owed, or the sum that was paid satisfies the amount of any Medicare lien in full.

The bill provides another option in which a claimant and plan can demand within 120 days of expected settlement a "final demand letter" from Medicare. Medicare is then required to provide a final demand as to the amount owed within 60 days, or risk forfeiture of the right to recover any payment from the parties. The parties can pay the amount of the final demand letter, negotiate the amount, or appeal the amount through a two-step appeal process that includes review by an administrative law judge and review board, and judicial review in district court.

H.R. 4796 would also (1) eliminate Medicare's right to recover payments valued at less than \$5,000, (2) set a statute of limitations of three years for any government actions under the Act, and (3) render the current mandatory sanctions discretionary. Under the new bill, violators of the act "may be" subject to a civil penalty of \$1,000 per day depending upon the intentional nature of the violation. There is also language in the bill that directs the Secretary of the Department of Health and Human Services to develop and recommend "safe harbors" which would allow claimants and plans to comply with the Act without suffering sanctions.

It is unknown if and when this bill will be enacted. However, if enacted the H.R. 4796 would allow businesses and carriers to think strategically and choose the appropriate option to achieve finality as to the amount owed, by: (1) working with the claimant and naming their own price as to the amount owed, or (2) demanding that Medicare advise how much is owed with the chance that they may not need to pay anything at all. Numerous business have supported the bill as a means to help end the uncertainty and delay of the current system. Businesses and carriers who favor the new tools contained in H.R. 4796 should contact their Congressional representative to voice their support and to urge that the bill be acted on in the House Energy and Commerce Committee to which it has been referred for consideration.

To review a full copy of H.R. 4796, please click the following link: [H.R. 4796](#).

For more information regarding H.R. 4796, please contact Casualty Department Chair Daniel S. Altschuler, Esquire at daltschuler@postschell.com, or Robert J. Balch, Esquire at rbalch@postschell.com.

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