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ALERT

Section 111 Bulletin: Legislative Fix Introduced in Congress to Section 111 Reporting Hurdles; Bill Also Seeks Broader MSP Reforms

March 12, 2010

The Medicare Secondary Payer Enhancement Act of 2010 (H.R. 4796) was introduced in the House of Representatives on March 9, 2010 by Congressmen Patrick Murphy (D. Pennsylvania) and Tim Murphy (R. Pennsylvania). The bill, which has received public support from coalitions of insurance industry interests, would amend the Medicare Secondary Payer statute (including Section 111 of The Medicare, Medicaid, and SCHIP Extension Act of 2007) by streamlining the Section 111 reporting process and providing finality to Medicare beneficiaries and insurers required to reimburse Medicare for "conditional payments" of medical expenses.

In particular, the bi-partisan legislation would establish:

- a $5,000 threshold for conditional payments that "applicable plans" (including liability insurers, no-fault carriers and workers' compensation plans) must return to the Medicare Trust Fund;
- a process by which claimants and applicable plans may repay the amount of conditional payments they in good faith calculate they owe the Medicare Trust Fund and thereby satisfy any repayment obligation they have if the Secretary of Health and Human Services does not contest the amount within a 75-day period;
- a process by which claimants and applicable plans may request-prior to settling a claim-a final determination from the Secretary of the amount of conditional payments owed the Medicare Trust Fund (previously only claimants could request this information) and if necessary appeal that determination to

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an administrative law judge, administrative review board and ultimately federal district court; and

- requires the Secretary to assess and collect a $30 fee from each person or entity that reimburses Medicare for a conditional payment or requests a determination of a conditional payment amount.

The Act also would:

- modify the Section 111 reporting process such that an applicable plan (also referred to as a Responsible Reporting Entity) need not report the Social Security Number or Medicare Health Identification Claim Number of a Medicare beneficiary whose claim the plan pays;
- set a 3-year statute of limitations for suits brought by the government to recover conditional payments (but does not address how this provision would work vis-à-vis 42 U.S.C. § 1395y(b)(vi), which requires CMS to request repayment from applicable plans within a 3-year claims-filing period);
- amend the current penalty assessed an applicable plan that fails to report claims payments under Section 111 from $1,000 a day to "up to" $1,000 a day based upon the "intentional nature of the violation"; and
- call upon the Secretary to solicit proposals for the creation of safe harbors from Section 111 penalties.

Our Section 111 Team routinely monitors CMS action regarding MMSEA mandatory insurer reporting and Medicare Secondary Payer requirements. You may access our Section 111 webpage and the other Section 111 Bulletins and articles we have published at www.wileyrein.com/section111.