

MEDICARE BILLS INTRODUCED INTO US SENATE WILL MAKE SWEEPING CHANGES TO MSA ALLOCATIONS AND HANDLING IF PASSED

By Benjamin A. Leonard June 15, 2015

Recently introduced US House Bill 2649 and US Senate Bill 1514 will make some very sweeping changes to the use of Medicare Set Aside Allocations in workers compensation claims nationally. A bipartisan team of Republican and Democratic legislators, Senators Rob Portman (sponsor, R-OH) and Bill Nelson (co-sponsor, D-FL) introduced Senate Bill 1514 into the U.S. Senate on June 4, 2015. An identical bill was also introduced in the House the same day by Representatives Dave Reichert (sponsor, R-WA) and Mike Thompson (co-sponsor, D-CA). The bills, if passed by both chambers, will be reconciled and then sent to the President for signature.

The bills are groundbreaking in a number of ways:

- Legislatively, for the first time, a Medicare Set Aside Allocation is specifically defined. Previously there was no legislative authority for any such instrument to fund Medicare's interests after settling a workers' compensation claim. The instrument is referred to in the legislative proposals as a Qualified Medicare Set Aside ("QMSA"). The definitions for the QMSA are the same as currently defined for the MSA process of submissions.
- The QMSA process of submission and approval remains the same, however, the bills will give the submitting parties some significant new rights to appeal any decision of the reviewer on value and structure of the QMSA. The process will be very similar to that previously established for conditional demands.
- The bills equally limit the application of the Medicare Secondary Payer ("MSP") Act upon workers compensation settlements of \$25,000.00. This is significant insofar as settlements under \$25,000.00 may not have to consider Medicare's interests; currently they have to consider those interests, but simply do not have to submit an MSA to CMS for approval. Additionally, what sums qualify as part of the \$25,000.00 so-called "safe harbor" threshold are also defined.
- Use of so-called "compromise" or "liability" settlements wherein a portion of the medical care is contested or controverted may serve as a basis to reduce the QMSA. Again, this is explained in a separate article on this site.
- Liability for payment of services in excess of the QMSA amounts is limited by the bills. Particularly, all the parties to the settlements, including agents of the same, will be protected by CMS from amounts in excess of the approved amounts as enforced by CMS through the Justice Dept. These amounts will always have to comply with the amounts under the fee schedule of a state of proper jurisdiction (ie, the state where the settlement is approved or where the parties agree

jurisdiction is appropriate).

· Finally, the bills concede the QMSA approval process and allocation appeals process will be governed by the laws of each state as they pertain to workers compensation. This does not, however, mean that pre-emption will not be applied when there is a conflict of laws. This is of particular concern in GA where there is a limit on medical care of 400 weeks, yet, this limit likely would not adequately consider Medicare's interests in all instances.

Articles outlining the potential impacts of all the above referenced points are going to be posted on this site shortly. In sum and substance, the bills are a positive step forward in clearing up a lot of confusion regarding MSA usage and the rights of the parties in the process of approval by CMS. It should be underscored at this time, however, this is only a proposed piece of legislation and nothing has been passed by either chamber. Nonetheless, the bi-partisan support and the issues being dealt with in the bills do give industry experts hope the legislation will survive debate and at least get a significant vote on the floor of each chamber.

In the interim, if you have questions or concerns about any of the above, please contact **Benjamin A. Leonard** at bal@boviskyle.com or call directly at 678-338-3964. Mr. Leonard will also gladly supply a copy of the proposed legislation upon request for the same.