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U.S. Senate, House pass the SMART Act: Medicare compliance changes on the horizon

On December 21, 2012, we were very pleased to learn that, by a unanimous vote and just one week after their counterparts in the U.S. House of Representatives, the U.S. Senate passed the Strengthening Medicare and Repaying Tax Payers (SMART) Act. As both a founding member and a steering committee member of the [Medicare Advocacy Recovery Coalition](#) (MARC), Sedgwick has been working closely with Congress and other coalition members to secure the passage of this law.

The law still has to be signed by the President, and the Centers for Medicare & Medicaid Services (CMS) has to create certain regulations to fill in some of the details. However, we are confident that, once the law is signed and the regulations are passed, the changes contained in the law will benefit our casualty clients on two fronts: Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA/SCHIP) reporting obligations and Medicare conditional payment (“lien”) resolution.

MMSEA reporting obligations

The SMART Act:

1. Reduces the penalty from a mandatory \$1,000 per day to a more reasonable “up to” \$1,000 per day. The SMART Act gives CMS much more latitude in levying penalties and alleviates the mandatory \$1,000 per day penalty that was included in the MMSEA;
2. Establishes a clear three-year statute of limitations for any violations of the MMSEA;
3. Forces CMS to establish a “safe harbor” process. This will provide a good faith exception if the process is followed and a Medicare beneficiary is not identified. Prior to the passage of this act, the MMSEA contained no such safe harbor provision;
4. Eliminates the need to provide claimants’ full Social Security number or Medicare identification number in the reporting process. Historically, providing this information has been a major obstacle to ensuring compliance.

Medicare liens

With regard to Medicare conditional payments, or liens, the SMART Act:

1. Allows CMS to provide a final conditional payment amount *before settlement*. CMS’s interpretation of the original law mandated that the settling parties could not obtain the final amount until *after the case settled*, which often posed problems in facilitating settlements;
2. Establishes a right of appeal for insurance companies and self-insureds, which will help to ensure that payers are not covering services unrelated to the injuries associated with their claims. Previously, only the Medicare beneficiary had a right of appeal;

3. Establishes a clear three-year statute of limitations that begins on the date the government receives notice of a settlement;
4. Forces CMS to establish a settlement threshold every year under which settlements can be completed without regard for any conditional payments. This section applies only to liability cases and excludes ingestion, implantation, and exposure cases.

We are hopeful that these changes will take effect soon and that our clients will see some of the burdens of Medicare compliance lifted in late 2013 or early 2014 as a result of the SMART Act. In the meantime, we are revising our Medicare compliance best practices in accordance with the act and are preparing new training for our examiners so we can help you take full advantage of these changes as soon as they are in place.

If you have any questions about the SMART Act, please contact your Sedgwick client services representative.

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