



NCOIL Renews Support for WC MSA Reform Legislation

At its summer meeting in Burlington, Vermont, the National Conference of Insurance Legislators (NCOIL) renewed its support for legislation to reform the process by which the Centers for Medicare and Medicare Services (CMS) reviews workers' compensation set-aside arrangements (WC MSAs), and specifically supported HR 5284 introduced this Congress by Rep. Dave Reichert (R-WA) and Mike Thompson (D-CA). I have attached the updated resolution for your information.

The coalition in support of HR 5284 continues to build support for the bill with key members of the House Ways and Means Committee in hopes of the legislation having the bi-partisan support needed for its serious consideration late this year and/or early in 2013.

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

**Resolution in Support of H.R. 2549 5284, Establishing
Workers' Compensation Medicare Secondary Payer Reforms**

Adopted by the NCOIL Executive Committee on November 23, 2008, and Workers' Compensation Insurance Committee on November 20, 2008, and sponsored by Sen. Ralph Hudgens (GA).

Amendments/updates to be considered by the Workers' Compensation Insurance Committee on July 12, 2012.

Sponsored by Rep. Barry Hyde (AR)

WHEREAS, through workers' compensation, employers fulfill their statutory duty to provide all reasonable and necessary medical care when workers are injured on the job, at no cost to the worker, as well as cash benefits replacing lost wages, for what can be for life; and

WHEREAS, when an injured worker who is a Medicare recipient (or about to become a recipient) is injured on the job, both the insurer and Medicare may have responsibility for future medical expenses covered by both workers' compensation and Medicare, costs of which are primarily the responsibility of workers' compensation pursuant to the Medicare Secondary Payer Act; and

WHEREAS, when a worker has both workers' compensation and Medicare coverage, the Centers for Medicare & Medicaid Services (CMS) is responsible for ensuring that Medicare is the secondary payer, in cases when a workers' compensation claim is settled and the settlement forecloses payment by the employer's workers' compensation insurer for future medical services; and

WHEREAS, a workers' compensation Medicare Set-Aside (MSA) arrangement is an amount of settlement funds allocated in each settlement to be used solely by the injured worker for Medicare covered expenses; and

~~WHEREAS, a workers' compensation MSA arrangement is the commonly accepted mechanism through which a party can meet its responsibilities to CMS under the Medicare Secondary Payer Act; and~~

~~WHEREAS, CMS, without statutory authority, has declared that providing for an MSA in a workers' compensation settlement and approval of such MSA by CMS is the mechanism to guarantee that CMS will not assert a future liability on the parties under the Medicare Secondary Payer Act and is the only way to be certain that CMS won't later determine that its interests were not adequately considered; and~~

WHEREAS, CMS has established standards for the creation of and review of such proposed allocations in settlement agreements, without any specific statutory authority, the application of which is subjective and inconsistent; and

WHEREAS, CMS routinely rejects proposed MSA settlement agreements without providing adequate

explanation; and

WHEREAS, CMS has published ~~six~~ a series of MSA policy statements since 2001, all outside the normal rulemaking process, and thereby precluding notice and the opportunity to comment; and

WHEREAS, CMS determinations of the adequacy of an MSA, because of the lack of meaningful criteria as well as inconsistency, are an impediment to conducting business; and

WHEREAS, there is no means to appeal an adverse determination; and

WHEREAS, CMS approvals can be delayed for months and at times over a year, preventing injured workers from settling their claims and returning to work; and

WHEREAS, the delays and uncertainty have resulted in the inability of employers and injured workers to settle and close their claims expeditiously, higher costs for insurers, higher employer premiums reflecting insurers' higher costs, MSA funding in amounts higher than under state workers' compensation laws, and an unknown future liability to CMS; and

WHEREAS, H.R. ~~2549~~ 5284, *The Medicare Secondary Payer and Workers' Compensation Settlement Agreements Act of 2007*~~12~~ was introduced in the United States House of Representatives to address several desirable reforms to the Medicare Secondary Payer Act and the MSA review process; and

WHEREAS, reforms to the Medicare Secondary Payer Act would protect the interests of Medicare and CMS while decreasing costs, administrative burdens, and confusion for employers, insurers, state workers' compensation systems and injured workers; and

WHEREAS, reforms supported in H.R. ~~2549~~ 5284 would amend the Medicare Secondary Payer Act to establish clear criteria for when an MSA should be reviewed; create certainty as to the rules for calculating an MSA; establish safe harbor provisions; provide optional direct payment to CMS for the set-aside to Medicare; provide a set-aside review process; and provide certainty for state-approved settlements;

NOW, THEREFORE, BE IT RESOLVED that the National Conference of Insurance Legislators (NCOIL) endorses reforms to the Medicare Secondary Payer Act, as proposed by H.R. ~~2549~~ 5284; and

BE IT ALSO RESOLVED that a copy of this resolution be submitted to each member of Congress, as well as state legislative leadership throughout the country.