ABA Urges Support for Corrective Medicare Set-Aside Legislation, H.R. 2649 and S. 1514

**Background:** A worker attempting to settle a workers’ compensation claim for an injury that may require future medical attention often faces delays and uncertainty if the injured worker is or soon will become eligible for Medicare. That is because the Centers for Medicare and Medicaid Services (CMS) requires that some of the settlement money be set aside in case funds are needed to pay for future medical bills. By requiring a set-aside, CMS is legitimately protecting the statutory role of Medicare as secondary to other sources of payment for medical care, including workers’ compensation benefits. However, CMS has failed to establish and apply fair and uniform rules for reviewing proposals and efficiently determining the appropriate amount of money to be set aside.

**Problem:** The process by which CMS reviews proposed set-asides is unpredictable, inefficient, and slow, often resulting in protracted delays in determining the amount of a settlement to be reserved to protect Medicare’s interest. In other instances, CMS requires set-asides for future medical expenses that are inconsistent with the provisions of the claimant’s state workers’ compensation system. Additionally, there is no appeal of CMS’ set-aside determinations. This time-consuming and unpredictable process is unnecessarily costly to injured workers, employers, insurers and states that administer workers’ compensation laws and can seriously impair the future financial welfare of tens of thousands of injured workers annually.

**H.R. 2649 and S. 1514, bipartisan corrective legislation, would:**

- Establish clear criteria for when a set-aside may be reviewed by Medicare;
- Create certainty for calculating the amounts to be included in set-asides;
- Provide a reasonable time frame in which CMS is to review set-aside submissions;
- Provide a process for parties to appeal CMS determinations; and
- Provide an optional direct payment of set-aside amounts to Medicare. (This provision is expected to increase government revenue.)

These bipartisan bills have broad-based support from the trial bar, employers, and the insurance industry.

**Congress should pass this legislation because it will establish a fair, predictable, and efficient process for the review of Medicare set-aside proposals that also will save all interested parties, including CMS, time and money.**

- The ABA urges you to cosponsor and support enactment of these bills.
  - **House sponsors:** Contact Lindsay Manson (Rep. Reichert, R-WA) or Casey Badmington (Rep. Thompson, D-CA).
  - **Senate sponsors:** Contact Sarah Johnson (Sen. Portman, R-OH) or Corey Malmagren (Sen. Nelson, D-FL).

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