

February 16, 2011

## Kentucky to Follow Maryland's Example?

Apparently Kentucky is taking its cue from Maryland with regard to approval of Medicare Set-Asides, but is going a step further. While Maryland is currently deciding whether or not to make the “emergency regulations” implemented in January, 2010 final, “legislation” has been introduced in the Kentucky Senate, specifically SB104, which would require workers’ compensation settlements to obtain approval from the Centers for Medicare and Medicaid Services (CMS) for future medical allocations under the Medicare Secondary Payer (MSP) Act. The bill reads as follows:

### ***An ACT relating to workers' compensation***

*Amend several provisions of the workers' compensation Act in KRS Chapter 342; define and recognize temporary partial disability benefits and amend other statutes to comply; limit medical benefits to age 70 or five years after the date of injury whichever is later, except for permanent total awards or awards involving prosthetic devices which continue for as long as the employee is disabled; allow attorney's fees or increased payments for medical fee disputes that are decided in favor of the claimant; require utilization review doctors to be licensed in Kentucky and treat patients for at least 50% of their practice; amend the reopening statutes to allow for reopening for additional temporary total or partial benefits; allow employees of subcontractors and leasing companies to receive the safety penalty increase if a contractor who is not their employee violates a safety statute or regulation; provide that the employee of an employer intentionally violating a safety statute or regulation which violation is the proximate cause of the employee's injury may claim compensation under KRS Chapter 342 and maintain a tort action against the employer; permit claimants who have awards of \$60 or less per week to elect a lump sum and to receive a one point higher discount rate than that set by the commissioner; **require settlements for future medicals to be approved by the federal Medicare Secondary Payer Act**; permit claimants to recover damages from an insurance carrier who commits an unfair claims settlement practice; increase attorneys' fees to a total of \$24,000; specify that administrative law judges do not approve attorney's fees; prohibit application of up-the ladder liability and exclusivity for a general contractor not if a subcontractor has secured workers' compensation insurance for its employees; enumerate changes to the manner that income benefits are determined; increase the maximum for temporary total or partial income benefits from 100% of the state average weekly wage to 120% of the state average weekly wage; increase the maximum of permanent partial income benefits from 75% to 85% of the state average weekly wage; increase and clarify multiplier language factors; provide that the time limit for permanent partial income benefits are determined by*

### Pharmacy | Medical Services and Equipment | Settlement Solutions

**PMSI—Proven Solutions for Cost Containment** Founded in 1976, PMSI is a leader in developing solutions to control the growth of medical costs in workers’ compensation. As one of the nation’s largest and most experienced companies focused solely on workers’ compensation, we deliver proven solutions for cost containment across the claims lifecycle. PMSI’s solutions for Pharmacy, Medical Services and Equipment, and Settlement Solutions deliver quantifiable results and improve the quality of care for injured workers. We provide our customers with the innovation, focus, expertise, analytics and technology needed to successfully deliver workers’ compensation benefits.



*the impairment ratings; other amendments to conform. (Interesting placement of the language within the bill.)*

Kentucky has been very vocal in reference to the MSP Act. Recently the Kentucky Supreme Court, in the case of Hudson v. Cave Hill Cemetery, 2010-SC-0023-WC, held that the amount of the Medicare Set Aside is an essential term of settlement thereby declining to enforce a workers' compensation settlement. The holding of this case would logically fit within the spirit of the proposed legislation. It appears both the Senate and the Judiciary may be on the same agenda regarding the MSP Act.

Given the benefit of hindsight experienced within Maryland, we can almost certainly predict the impact such legislation would have on settlements (particularly in reference to delay) and the workers' compensation system in general. SB104 is definitely a bill worth tracking.

For more information, please contact Rochelle Lefler, Executive Counsel, PMSI at [Rochelle.Lefler@pmsionline.com](mailto:Rochelle.Lefler@pmsionline.com) or 813.318.6751.