



KOPKA PINKUS DOLIN & EADS, LLC

Client Advisory

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State Children's Health Insurance Program (SCHIP) LIABILITY AND WORK COMP INSURERS GET PARTIAL REPRIEVE UNDER NEW MEDICARE REPORTING REQUIREMENTS

by Partner Randy Graff

Implementation of the electronic filing requirement has again been postponed under the new law requiring insurers to report injury claim information for all Medicare-eligible claimants. The actual electronic reporting of injury claim information by liability, no-fault and workers compensation insurers (as well as self-insureds) will not begin until at least April 1, 2010. This new start date for electronic filing was announced in a Revised Implementation Timeline issued earlier this month. The start date for electronic reporting has repeatedly been pushed back even though the new law retains its effective date of July 1, 2009.

The new law, which is being implemented in phases, is the "Medicare, Medicaid and State Children's Health Insurance Program (SCHIP) Extension Act" (MMSEA). While the electronic filing is delayed until next year, the mandatory reporting takes effect July 1, 2009. Therefore, the reporting requirements will apply to claims pending on July 1, 2009 and from that date forward even though the information may not be electronically filed until next year.

This also means that even if a Medicare beneficiary was injured before July 1, 2009, if he or she has medical expenses on or after July 1, 2009 that are paid by workers compensation, auto or homeowners medical payment coverage or through no-fault insurance, the information about those payments, awards or settlements is subject to the new law and must be documented (even though it will not get sent to Medicare until next year). After the initial information is sent to Medicare, the information will need to be updated quarterly if there is a change in circumstances (such as a settlement, judgment, name change, medical payment since the last file submission, etc.) The information will be sent via a secure Internet connection or other approved electronic means.

The purpose of MMSEA is to provide verification that Medicare's interests are being considered during the claims process so that a claimant does not receive Medicare benefits when the expense should have been covered by other insurance. The new law will better enable Medicare to recover its "conditional payments" which must be reimbursed from the proceeds of an award or settlement of an injury claim. Please note that Medicare is always a secondary payer to liability insurance (including self-insurance), no-fault insurance and workers compensation. (MMSEA has a separate section pertaining to group health insurance which has different rules and implementation dates.)

Although the overall name of the new law includes reference to the state-operated programs of Medicaid and SCHIP, the mandatory reporting requirements found in Section 111 of MMSEA (42 U.S.C. §1395y(b)(8)) pertain only to claimants eligible for Medicare. However, this not only means persons who are 65 or older, but also persons of any age who:

- Have end stage renal disease (kidney disease/dialysis patients)
- Apply or will potentially apply for Social Security Disability Insurance (SSDI)
(which could include work comp claimants who are permanently and totally disabled)

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MSEA adds reporting rules but does not change existing law with regard to Medicare's rights to recover third party payments (42 U.S.C. § 1395y(b)(2) which is sometimes referred to as the "Medicare Super Lien"). MMSEA also does not change laws affecting Medicare Set-Asides. Since Medicare Set-Asides need to be contemplated for claimants nearing age 65, it would likewise be advisable for claim representatives to flag claims of persons in their early 60's so that if the pendency of the claim or the Ongoing Responsibility for Medicals (ORM) extends past age 65, the insurer or self-insured will properly and promptly report the information to the Centers for Medicare and Medicaid Services (CMS).

Although MMSEA applies to self-insureds, a self-insured can avoid the reporting requirements under certain circumstances. Where an entity is self-insured for a deductible but the payment of that deductible is done through the insurer, then the insurer is responsible for including the deductible amount in the amount it reports as a settlement, judgment, award or other payment. In this circumstance, the self-insured does not report the payment because the CMS does not want to receive duplicate payment information.

Other noteworthy items about this legislation:

- Failure to comply with the reporting requirements can result in a fine of \$1,000 per day per claim file.
- One time payment for defense medical evaluation - A payment made specifically for this purpose directly to the provider or other physician furnishing this service does not trigger the requirement to report.
- Settlements, judgments, awards, or other payments must be reported regardless of whether or not there is an admission or determination of liability.
- Reports are required with either partial or full resolution of a claim.
- The geographic location of the incident, illness, injury is not determinative of the reporting responsibility as Medicare beneficiaries who are injured outside the United States often return to the U.S. for medical care.
- **If the claim represents ongoing responsibility for medicals, you must continue to monitor the status of the injured party** as long as the claim remains open in order to determine if/when the injured party becomes entitled to Medicare.

This is a relatively new topic that is still a constantly changing area for which we will continue to monitor and provide updates. We are available to provide your company with a seminar regarding this act. If you are interested in please contact Claire Slattery at 847.549.9611 x629. The above discussion is not meant to be exhaustive. You can download a 180-page guide at <http://www.cms.hhs.gov/MandatoryInsRep> but the deadline dates in that document have been changed by the Revised Implementation Deadline that is available at the same web site.

**For more information on the details of this act contact
Randy Graff in our Crown Point office at 219.794.1888**

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