

Medicare Mandatory Reporting Requirements Update

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You are probably beginning to notice some of the administrative difficulties in complying with the still relatively new Medicare mandatory reporting requirements. As you work through your specific reporting issues with your Responsible Reporting Entity (RRE)—which is typically your third-party administrator—it is probably a good time to remind you of the importance of group health plan participants providing their Medicare Health Insurance Claim Number (HICN) or Social Security Number (SSN) information to the RRE and to suggest that you keep on eye on the upcoming implementation of reporting for freestanding Health Reimbursement Arrangements (HRAs).

First, a recurring problem for RREs is obtaining HICN or SSN information of participants and their dependents. Because of heightened awareness of the risks of identity theft, individuals may be reluctant to provide HICN or SSN information. In response to this problem, CMS has issued guidance advising participants and dependents to cooperate with RRE requests for HICN or SSN information. CMS issued a revised model collection form in August 2009 that RREs may use to assist them in obtaining individuals' HICN or SSN information. The model collection form is available for download at the following CMS Web site link: http://www.cms.hhs.gov/MandatoryInsRep/04_Whats_New.asp#TopOfPage. When an individual refuses to provide HICN or SSN information, use of the model collection form provides the RRE with a safe harbor for purposes of Medicare mandatory reporting if the RRE:

- Does not know the individual is a Medicare beneficiary;
- Obtains a signed copy of the model collection form, even if the individual is later determined to be a Medicare beneficiary;
- Has the model collection form re-signed and dated every 12 months by the individual; and
- Retains the documentation.

Individuals who are reluctant to provide HICN or SSN information, however, may also ignore the model collection form. While CMS does not require that a health plan terminate an individual's coverage if the individual refuses to provide HICN or SSN information, CMS officials have suggested that the RRE should document its efforts to obtain a signed model collection form (for example, follow-up telephone calls made to request that the individual return the form).

You should also keep in mind that HICN or SSN information for dependents with coverage prior to January 1, 2009, does not need to be reported until the first quarter of 2011. Given the difficulty that

RREs sometimes face in trying to obtain HICN or SSN information, you may want to reemphasize to your employees that participate in your group health plan that providing such information is important for Medicare mandatory reporting purposes.

Second, although Health Flexible Spending Arrangements and in most cases Health Savings Accounts are not subject to the Medicare mandatory reporting requirements, freestanding HRAs are subject to such reporting requirements, regardless of whether the HRA has an end-of-year carryover or a rollover feature.

In many cases, HRAs are bundled with a more comprehensive group health plan, in which case only employees electing participation in the group health plan also participate in the HRA. There is no separate reporting requirement for these HRAs, as information about participants in the HRA is reported along with information about the group health plan.

However, if your plan offers a freestanding HRA benefit that is not tied to a particular health plan, the freestanding HRA must separately comply with the Medicare mandatory reporting requirements. Freestanding HRAs must start registration by May 1, 2010, in order to complete registration by June 30, 2010. However, if an RRE will have nothing to report because coverage does not overlap with Medicare, it is not required to register—which may occur if you have a freestanding, limited purpose HRA that, for example, only reimburses for dental and vision expenses but not for other medical expenses.

CMS guidance states that RREs that report freestanding HRA coverage with "effective dates" of October 1, 2010, must begin complying with the Medicare mandatory reporting requirements in the fourth quarter of 2010, and RREs that report freestanding HRA coverage with effective dates of January 1, 2011, must begin such compliance in the first quarter of 2011. At this point, it is unclear what CMS means by "effective date" and more guidance is necessary. CMS, however, has provided the following guidance:

- RREs are not required to report HRA coverage with effective dates prior to October 1, 2010;
- RREs only need to report termination dates when a participant loses or cancels coverage;
- RREs only need to report HRA coverage that is not linked to other group health plan coverage; and
- RREs only need to report HRA coverage for annual benefit values that are \$1000 or more.

If you provide your employees with freestanding HRA coverage, you may want to verify that your third-party administrator is aware of these Medicare mandatory reporting requirements and intends to begin registration on May 1, 2010.



For clarification or additional information on the Medicare mandatory reporting requirements, feel free to contact a member of the WNJ Employee Benefits Practice Group. Information related to Medicare mandatory reporting requirements is also available at <http://www.cms.hhs.gov/MandatoryInsRep/>.