

Client Advisory - Mandatory September 30, 2009 Registration Deadline Approaches for Insurers Subject to New Medicare Reporting Requirements

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The Medicare, Medicaid, and SCHIP Extension Act of 2007 (S. 2499) (the “Act”), signed into law on December 29, 2007, contains a new mandatory reporting requirement for insurers covering medical expenses. This advisory focuses on liability insurers, no-fault insurers, and workers’ compensation insurers.

Purpose of the Reporting Requirements

Generally, Medicare is the primary payer for medical claims of a Medicare beneficiary. If a beneficiary also has private insurance, that insurance may provide supplemental payments where Medicare has gaps in coverage. In certain situations, the Medicare Secondary Payer (“MSP”) rules make Medicare’s obligation to cover medical costs secondary to certain group health plans (“GHPs”), such as employer-sponsored health plans, and to liability insurers (including self-insurers), no-fault insurers, and workers’ compensation insurers.

Section 111 of the Act is aimed at gathering the necessary information to determine when Medicare’s financial responsibility is secondary. It does not, however, change any of the existing rules that determine whether Medicare or another payer is the primary or secondary payer with respect to a beneficiary. Therefore, by use of this information, Medicare will be able to properly determine when its financial responsibility is secondary so that it can reduce its payments to a beneficiary, or if payments have already been made, recoup those payments.

Reporting Requirements

Section 111 of the Act requires GHP insurers, liability insurers (including self-insurers), no-fault insurers, and workers’ compensation insurers to (i) determine whether a claimant (including an individual whose claim is unresolved) is entitled to benefits under Medicare on any basis; and (ii) if the claimant is determined to be so entitled, submit the identity of the claimant and any such other information deemed necessary on a quarterly basis to the Centers for Medicare and Medicaid Services (“CMS”). The entity that is making the claim payments is responsible for reporting the required information regardless of whether it is reimbursed by another entity for those payments. These reporting requirements also apply to captive insurers, risk retention groups and risk purchasing groups that provide liability insurance. Further, corporations (whether or not they are healthcare providers) that either self-insure, in whole or in part, or utilize a captive insurer to cover their medical liability risks are subject to the same reporting requirements as commercial liability insurers.

GHPs were required to register earlier, with a deadline of April 30, 2009. Liability insurers (including self-insurers), no-fault insurers and workers’ compensation insurers responsible for reporting must register online as a responsible reporting entity (“RRE”) with CMS’s

Coordination of Benefits Contractor by September 30, 2009. The quarterly reporting schedule for each RRE will be determined by CMS. Reports must include any settlement, judgment award or other payment made on or after January 1, 2010, with respect to a Medicare beneficiary (regardless of whether there is a determination or admission of liability). Also, because CMS does not differentiate between the payment of medical and non-medical expenses, if medical expenses are claimed, then the entire settlement amount of a liability claim must be reported, not just the medical expense portion.

Reporting Deadline Looms Near

Reporting requirements for liability insurers (including self-insurers), no-fault insurers, and workers' compensation insurers become effective on January 1, 2010, with the first reports to be due between April 1, 2010 and June 30, 2010 based upon a schedule to be determined by CMS.

Managing the Reporting Process

Each RRE must nominate a company employee as an Authorized Representative with authority to contract on behalf of the RRE and to be accountable for the RRE's reporting compliance. The RRE must also assign a company employee or an outside agent to manage the reporting process and the online account. While an RRE may only have one Account Manager, the Account Manager can oversee other Account Designees to assist with managing the reporting requirements. Please note that if an RRE hires an outside agent to undertake its reporting requirements, the outside agent may not register on behalf of the RRE, as the RRE is required to register itself.

This advisory is for guidance only and is not intended to be a substitute for specific legal advice. If you would like further information, please contact the Edwards Angell Palmer & Dodge LLP attorney responsible for your matters or one of the attorneys listed below:

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