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GAO Report: Despite Challenges, Medicare Secondary Payer Rules Saved Program $124 Million Over Three-Year Period

The Government Accountability Office (GAO) recently released a report analyzing the impact of a provision of the Medicare, Medicaid, SCHIP Extension Act of 2007 that imposes a mandatory reporting requirement upon certain insurers. The law, found at 42 U.S.C. § 1395y(b)(7)-(8), applies to situations in which Medicare's payment obligation is secondary to another payer's obligation. In these situations, CMS is not always notified that another payer is primary, and, as a result, Medicare sometimes covers benefits it is not obligated to pay. To minimize Medicare Secondary Payer (MSP) losses, the law obligates certain health plans to alert CMS once settlements have been reached with beneficiaries – to avoid having Medicare make payments and/or identify instances in which an attempt should be made to recover payments already made. Payers that fail to comply with the mandatory reporting requirements, which are still being phased in, are subject to fines.

The GAO report looked at the initial implementation of the law's mandatory reporting requirement in the specific context of non-group health plans (NGHPs)—such as auto or other liability insurance, no-fault insurance, and workers' compensation plans—and the resulting savings to Medicare. It also identified challenges to the implementation of the reporting requirement going forward and recommended steps to address them. With respect to increased efficiencies, GAO found that the reporting requirement, while not yet fully phased-in, resulted in $124 million in savings from 2008 through 2011 (the Congressional Budget Office had estimated that the reporting scheme would save Medicare $1.1 billion over a ten-year period). The report also noted that the law's actual impact on Medicare "could take years to determine" because of delays between the time when CMS is notified of an MSP situation and any recovery, and because not all MSP situations lead to recoveries.

The report identified a number of challenges, including difficulties with determining whether reporting obligations have been triggered under the law—which may subject NGHPs to penalties for noncompliance. Specifically, NGHP stakeholders said that they are having a hard time verifying whether certain individuals are Medicare-eligible because many beneficiaries tend to be reluctant to turn over personal information (*e.g.*, Social Security numbers). On this issue, the report noted that CMS has been assisting NGHPs with ways to collect the necessary information from beneficiaries and has indicated that NGHPs that follow certain CMS-recommended steps will be deemed compliant with the reporting requirement.

Some of the GAO report's other findings included:

- The workloads of the three contractors that perform MSP-related administrative activities generally increased during the initial implementation period of the mandatory reporting requirement. Total CMS payments to these contractors also increased over the same period. For two of the contractors, the percentage increase in their workloads was significantly higher than the percentage increase in the payments they received.

- Contractor timeliness was identified as a challenge. In particular, NGHPs reported instances of long wait times when trying to contact contractors by telephone and delays in the issuance of demand letters to beneficiaries following settlements.
- To further control costs and improve efficiency, CMS has indicated a willingness to move toward a "self-service" model whereby NGHPs and beneficiaries could access and submit information through contractor websites and automated phone lines.

To view the GAO report, click here.

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