



Secondary Payer Requirements Get New Teeth

by Mark A. Shaw and Christopher P. Aemisegger

In the early 1980s, Congress passed legislation to protect the interests of Medicare. One of the protective measures, the Medicare Secondary Payer Act (MSP), sought to preclude the payment of Medicare benefits where payment was the responsibility of a primary payer.

In the Ohio workers' compensation context, the state-fund and self-insured (SI) employers are primary payers for work-related injuries. Thus, one of the purposes of the MSP is to prevent cost-shifting of Medicare benefits for work-related medical conditions.

Although the MSP provisions have been in effect, until recently, primary payers were not required to take an active role in assuring MSP compliance. In 2007, Congress passed the State Children's Health Insurance Program Extension Act (SCHIP) which increases the responsibilities and requirements of primary payers. Specifically, Section 111 of SCHIP requires that SI employers, as a primary payer of workers' compensation benefits, must report all claims involving a claimant who is or was entitled to Medicare benefits. Beginning July 1, 2009, an employer who fails to timely report such

Offices

Toledo Office:

One Seagate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699-0032
Telephone: 419-241-6000
Fax: 419-247-1777

Columbus Office:

100 E. Broad Street, Suite 600
Columbus, Ohio 43215
Telephone: 614-280-1770
Fax: 614-280-1777

Findlay Office:

725 S. Main Street
Findlay, Ohio 45840
Telephone: 419-424-5847
Fax: 419-424-9860

Novi Office:

28175 Haggerty Road
Novi, Michigan 48377
Telephone: 248-994-7757
Fax: 248-994-7758

www.eastmansmith.com

information may be subject to a fine of up to \$1,000 per day, per unreported claim. Thus, each unreported claim could result in an annual fine of \$365,000. To avoid being subject to these fines, there are two steps every SI employer must take in 2009.

Step One: Registration

Before an employer can begin the mandatory reporting process, the employer must first electronically register on the Medicare Coordination of Benefits Contractor's Secure Website (COBSW). Employers must complete COBSW registration between May 1, 2009 and June 30, 2009. Third-parties cannot register on behalf of an employer and failure to register will subject the employer to liability. Registration will require the employer to submit various forms of information including an address, tax identification number, and a designated agent responsible for claim reporting. Because registration can take a significant amount of time, it is recommended that employers begin the registration process as close to May 1 as possible.

Step Two: Reporting

Once the registration process is complete, employers must analyze all of their claims to determine which claims involve a claimant who was or is a Medicare beneficiary. The review process requires that employers look at all claims, beginning on or after July 1, 2009, which were partially or fully settled, and all outstanding claims for which the employer faces ongoing liability for the payment of medical benefits. (The Centers for Medicare and Medicaid Services (CMS) has extended recently the reporting deadline until July 2010 for all claims with ongoing medical liability originating prior to July 1, 2009.) Employers can contract with a third party agent, such as a third party administrator, to complete the reporting process. However, employers ultimately remain responsible for the accuracy and timeliness of any reporting conducted on their behalf.

If it is determined that a claimant is or was a Medicare beneficiary, employers have an affirmative duty to electronically submit information related to these claims within a seven day reporting period. To satisfy the reporting requirements, employers must submit the claimant's:

- name
- address
- Social Security Number or Medicare Health Insurance Claim Number
- date of birth
- gender
- claim number
- ICD Codes identifying the allowed conditions
- description of the injury and
- settlement information.

Because employers are subject to a fine of \$1,000 per day, per claim, it is important that employers conduct a thorough review process to assure that all claims involving a Medicare beneficiary are accurately and timely reported. If an employer is unsure whether a claimant is or was a Medicare beneficiary, CMS has implemented a query function that will provide this information.

Given the complexities involved in navigating the registration and reporting requirements, it is vital that self-insured employers develop a registration and reporting plan to avoid the harsh financial consequences of noncompliance.



Mr. Shaw is a member and Mr. Aemisegger is an associate with Eastman & Smith. Both practice in the Labor & Employment Practice Group of the Firm's Columbus office. If you have any questions regarding this issue or any other workers' compensation matter, please contact Mr. Shaw or Mr. Aemisegger at 614-280-1770.



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