

NEW MEDICARE SECONDARY PAYER REQUIREMENT: *Mandatory Reporting For Liability, No-Fault And Workers Compensation Insurers*

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The Medicare Secondary Payer law ("MSP") is again "in the news" for liability (including self-insured), no-fault, and workers compensation insurers. In December 2007, Congress amended the MSP law through Section 111 of the Medicare, Medicaid, and SCHIP Extension Act to impose mandatory reporting requirements on liability, no-fault, and workers' compensation insurers (collectively referred to as "non-Group Health Plans" or "Non-GHPs") regarding the Medicare eligibility of injured parties for whom they have paid or will pay a claim.¹

This mandatory reporting was designed to strengthen the ability of the Centers for Medicare & Medicaid Services ("CMS") to enforce the MSP rules, which describe the specific circumstances where Medicare does not have primary responsibility for paying the medical expenses of a Medicare beneficiary. Medicare is "secondary payer" in situations when a Medicare eligible individual has received a settlement, judgment award or other payment from a non-GHP that is intended to cover medical expenses that might otherwise be covered by Medicare. Non-GHPs subject to Section 111 reporting requirements have an affirmative duty to submit Medicare entitlement information to the CMS Coordination of Benefits Contractor on a quarterly basis.

These reporting requirements are extensive and onerous and will require a significant expenditure of time and effort, particularly at the outset. Insurers will be required to report on all claims involving an injury to a Medicare beneficiary that are "resolved" (or partially resolved) through a settlement, judgment, award, or other payment beginning July 1, 2009 as well as claims for which an insurer has continuing responsibility to pay for medical items or services as of July 1, 2009, *regardless of the date of initial acceptance of responsibility*. Most insurers probably have not tracked the Medicare eligibility of individuals to whom they have paid claims, so these reporting requirements will, at least initially, require a massive information gathering effort.

Although the deadline for initial reporting with the Non-GHP Section 111 reporting requirements is October 1, 2009 (an extension is available until January 2010 in certain circumstances), *Non-GHP insurers must register electronically with CMS by June 30, 2009* in order to begin the necessary testing of systems.

CMS only issued guidance regarding the details of reporting for Non-GHPs in late March, in the form of a 180 page User Guide, so the timeframe is tight. CMS has not yet issued guidance regarding reporting for mass tort claims, a particularly difficult issue in light of the fact that insurers often do not even know the names of the claimants.

Cozen O'Connor has developed Section 111 Compliance Guidelines for Non-GHPs detailing the information that must be reported, and how information is to be reported and handled. We look forward to assisting and providing efficient guidance to any clients who may be subject to these new rules.

1. Although Section 111 also applies to GHPs, this Alert is addressed only to Non-GHPs.

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