



Scheuer Mackin & Breslin LLC

Workers' Compensation Legal Alert

As we discussed in previous Legal Alerts, Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 ("Act") establishes new reporting requirements for group health plans, liability insurance administrators, and workers' compensation administrators. The purpose of Section 111 is to keep Medicare as a secondary payer of medical bills by preventing parties from shifting the cost of medical treatment away from the primary payer. This Legal Alert will focus on Section 111's requirements that relate to a self insured ("SI") employer's obligation to report certain workers' compensation claim medical payments to Medicare.

PENALTIES

The penalties for noncompliance under the Act are severe. Fines of up to \$1,000.00 **PER DAY PER CLAIM** can be levied as long as a claim goes unreported. There have been discussions that the government intends on using the penalty feature of the Act to help fund certain programs. Therefore, we anticipate Medicare will vigorously pursue violations of the Act.

REGISTRATION

The first step in the process is the electronic registration of all SI employers with The Center for Medicare Services. Electronic registration of SI employers will take place from May 1, 2009 through June 30, 2009. After registration, an SI employer will receive a 7 day time frame during which it will be required to file its first report. The first reporting period will take place from October 1, 2009 through December 31, 2009. Thereafter, reporting will take place on a quarterly basis. A complete user guide to registration will be published at a later date by Medicare at www.cms.hhs.gov/mandatoryinsrep. We recommend you check the website often for updates and instructions.

Please note that SI employers must register themselves. They may not use an agent (such as a Third Party Administrator) for the initial registration. An SI employer may contract with an agent to submit the actual claims reports. If this is done, the SI employer must register the agent. However, even with an agent, the SI employer remains solely responsible for complying with the requirements of Section 111 and for the accuracy of the data submitted.

Registration and reporting will be completely electronic. Medicare will not accept paper submissions. Once registered, a SI employer will be assigned an Account Manager by Medicare who will assist with data implementation.

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TRAINING

The Centers for Medicare and Medicaid Services (CMS) is offering free Computer Based Training courses to assist you in preparing for the Act. The courses include in depth training on reporting requirements, file transmission, file formats, and file processing. The training is self managed to allow you to learn at your own pace. Once you have registered, CMS will provide you with a curriculum of courses. You may register for the courses by contacting the Coordination of Benefits Contractor (COBC) Electronic Data Interchange (EDI) department at 646-458-6740. The EDI representative will take your company name and the name, phone number and e-mail address for the individual(s) you would like to register. Once the COBC has processed your company request, an e-mail notification will be sent to each individual containing the URL for each course.

MANDATORY REPORTING

The Act requires reporting of all claims involving an injured worker who is/was a Medicare beneficiary where settlement, judgment, award or other payment date is made on or after July 1, 2009, and claims in which ongoing responsibility for medical payments exist as of July 1, 2009, regardless of the date of the claim. Reporting is required quarterly. Subsequent quarterly submissions are to contain only new or changed information about a claim. In the event a settlement, judgment, award or other payment occurs within 45 days prior to the start of the 7 day reporting period, a SI employer may submit that claim on the next quarterly reporting period. This grace period will allow SI employers time to process the newly resolved claims prior to submission of its mandatory report to Medicare. If there have been no changes in the medical or settlement status of any reportable claim since the previous quarterly submission, a SI employer must make a quarterly report indicating that no changes have occurred.

Medicare will not assist in determining whether an injured worker has or is receiving Medicare benefits. Therefore, we strongly advise SI employers to err on the side of reporting all potentially eligible claims. There are no penalties for over reporting claims. A claim must be reported if there is a settlement, a partial settlement, or the injured worker is eligible to receive further benefits, whether or not they are currently being paid.

Some of the information that will need to be reported includes, but is not limited to, the following:

- Self Insured Employer's name, address, Employer Identification Number, NAIC Company code, telephone number, fax number, line of business, parent company's name and its NAIC code and EIN.
- Claimant's name, address, social security number, gender, date of injury, telephone number, attorney's name and the address and telephone number of the attorney.
- Workers' compensation claim number, ICD code(s) for allowed conditions, date of injury, state in which the claim is filed, and if settled, the date and amount of the settlement.

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A complete list of the information that is required to be reported can be found at www.cms.hhs.gov/MandatoryInsRep/Downloads/NGHPInterim120508.pdf.

Specific dollar amounts for medical bills paid do not need to be reported. The events that trigger an SI employer's mandatory reporting obligation are when responsibility for medical coverage begins and terminates.

Medicare is permitting SI employers to delay the reporting of claims in which responsibility for medical benefits occurred prior to July 1, 2009 in order to allow employers to determine whether an injured worker is a Medicare beneficiary. The extension does not apply to claims that are partially or fully settled on or after July 1, 2009. The extension applies only to claims where the SI employer has accepted ongoing responsibility with the potential of further payments after July 1, 2009. If the SI employer has information that such an injured worker is a Medicare beneficiary and the SI employer has the social security number, then it is to send the record with its initial filing in the fourth quarter of 2009. If the SI employer does not have this information, it may delay reporting on these claims until its third calendar quarter 2010 report.

We cannot over emphasize the importance of compliance with the Act due to the potentially devastating fines. For example, if only one reportable claim is not timely reported and the delay lasts for 90 days, the fine could be up to \$90,000.00.

As always, Scheuer Mackin & Breslin LLC will continue to monitor further developments and update you accordingly. Should you have any questions concerning the new requirements, please feel free to contact us.

THIS UPDATE IS PROVIDED AS A SERVICE TO OUR FRIENDS AND CLIENTS FOR INFORMATIONAL PURPOSES, AND IS NOT INTENDED TO CONSTITUTE LEGAL ADVICE APPLICABLE TO ANY GIVEN CASE. PLEASE CONTACT ANY OF OUR ATTORNEYS FOR MORE INFORMATION AS TO THIS IMPORTANT DEVELOPMENT IN OHIO WORKERS' COMPENSATION LAW.

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