

Medicare Secondary Payer Requirements For Workers' Compensation and Liability Claims

January 2009

We are certainly becoming familiar with new acronyms in the insurance industry, in having dealt with MSA (Medicare Set Asides) and CMS (Centers for Medicare & Medicaid Services) in workers' compensation and liability for several years. Now we are faced with a new aspect of these federal laws, which are the reporting requirements of MSP (Medicare Secondary Payer). One thing is for sure, reporting will be mandatory.

Requirements

Effective July 1, 2009, when a workers' compensation or liability claimant has been identified as Medicare eligible, the insurer or self-insurer "shall" report this information to the U.S. Secretary of Health & Human Services, Centers for Medicare & Medicaid Services (CMS) after the claim has been resolved by settlement, judgment, award or other payment regardless of whether or not there is a determination or admission of liability.

Background

Medicare has long been a secondary payer to workers' compensation and liability claims for Medicare beneficiaries. The new law will provide more information to Medicare to ensure that Medicare makes payments in the proper order and/or takes necessary recovery actions. Medicare will do so by requiring employers and carriers to report certain information about claimants for whom Medicare may be the secondary payer. This mandated reporting must be submitted electronically to CMS on a quarterly basis by the Responsible Reporting Entities (RRE), which is further defined as **self-insured employers** and **carriers**.

MSP reporting requirements also apply to Group Health Plans with an effective date of April 1, 2009. If Keenan also administers your GHP, please see our detailed briefing issued in October 2008 for more specific information regarding reporting compliance.

Medicare Beneficiaries

Who is a Medicare beneficiary? Several rules apply, but in general:

- Claimants age 65 years and older
- Claimants with End Stage Renal Disease
- Claimants who are disabled and qualify for SSDI (Social Security Disability Indemnity). After two years of receiving the benefit automatically becomes eligible for Medicare.

Penalties

Once reporting begins, a self-insured employer or carrier that fails to report the required information will be subject to a civil penalty of \$1,000 per claimant for each day of non-compliance.

What Keenan will do for You

If Keenan administers your workers' compensation and/or liability programs, we will act as your reporting agent on behalf of the RRE (so long as this is allowed by CMS and that you have elected to designate Keenan as your reporting agent). We have been working with our claims system vendor, Valley Oak Systems, to fully comply with these reporting requirements and will have full electronic reporting in place by July 1, 2009.

The RRE is required to register on-line (which is currently under development by CMS). Once the application is submitted, CMS will work with the RRE to set up the data reporting and response requirements. Keenan is currently seeking clarification with CMS to determine if Keenan can complete the registration process on behalf of the RRE for which Keenan administers your workers' compensation and liability programs. The registration process will commence May 1, 2009 and will end June 30, 2009.

If Keenan does not administer your program, you will need to contact your service provider immediately to determine their ability to comply with these requirements. Penalties are assessed to the self-insured employer or carrier, not the TPA.

Next Steps

Claim data elements have been preliminarily defined by CMS, but have not yet been finalized. It is not anticipated that these will be finalized before May 2009. As of this date, Keenan will be able to fully comply with all preliminary claim data elements. Keenan is currently attending monthly conference calls with CMS to gain updated information and to ensure reporting compliance by July 1, 2009.

We will continue to provide updates on this important subject. If you have any questions regarding the information contained in this *Briefing*, please feel free to contact your Account Executive, Claims Analyst, or Account Manager. You may also contact Tracy Gold at 310-212-0363 x3739 or tgold@keenan.com.