

## New Mandatory Medicare Reporting

In December 2007, President Bush signed into law the Medicare, Medicaid, SCHIP Extension Act of 2007 (MMSEA). Section 111 of the act created mandatory reporting requirements for payments made by thousands of businesses and institutions, including many of the educational institutions that United Educators insures. Failure to comply may result in penalties of \$1,000 per claim, per day. To enforce the law, Congress has charged the Centers for Medicare and Medicaid Services (CMS) with creating the reporting framework described in the FAQs below.

More detailed information can be found in the [MMSEA Section 111 Medicare Secondary Payer Mandatory Reporting Liability \(Including Self-Insurance\), No-Fault Insurance, and Workers' Compensation USER GUIDE, version 1.0.](#)

### MMSEA Section 111 FAQs

#### 1. Who has to report under this new law?

Any institution that CMS defines as a Responsible Reporting Entity (RRE) must register and file quarterly reports. The reference to RREs is broad and includes:

- a. Any business or institution that self-insures for **any** portion of its no-fault medical payment coverage.
- b. Any business or institution that makes a payment higher than the reporting threshold on or after **January 1, 2010, to a Medicare beneficiary** to satisfy a liability claim involving medical treatment. It is immaterial whether the payment is a deductible, a self-insured retention, or an uninsured loss under automobile, general liability, or professional liability policies.

#### 2. What are the mandatory reporting thresholds?

- n \$5,000 for payments made on or after January 1, 2010
- n \$2,000 for payments made on or after January 1, 2011
- n \$600 for payments made on or after January 1, 2012

#### 3. What has to be reported?

Any payment higher than the above-listed threshold made after the specified date **to a Medicare beneficiary** for a claim involving medical treatment. In practical terms, this includes any payment by an RRE to a Medicare beneficiary for:

- a. Partial or full settlement of a bodily injury claim
- b. Medical treatment under a no-fault accident plan (note: no dollar threshold)
- c. Benefits under a workers' compensation plan

#### 4. When do the payments have to be reported?

The first reporting window will be in the second quarter of 2010. At that time, RREs will be required to include all payments made on or after January 1, 2010, that exceed the reporting criteria. Subsequent reports will then be required on a quarterly basis during a specific week established by the CMS's agent, the Coordination of Benefits Contractor (COBC).

## 5. How can an RRE determine if a claimant is a Medicare beneficiary?

Simply asking the claimant or his or her attorney whether bills were or should have been covered by Medicare won't protect an RRE from penalties if the claimant gives the wrong answer.

Once you are registered in the COBC system (see question 8), CMS allows RREs to inquire once each month whether claimants qualify as Medicare beneficiaries. To perform this query, RREs must know the claimant's Social Security number (or Health Insurance Claim Number [HICN]); first and last name; date of birth; and gender.

Whenever possible, RREs should gather this information from existing files in advance of settlement discussions because the RRE will need time to include the claimant in a monthly query to CMS; obtain a response, and then report the payment to COBC in the next quarterly file submission.

## 6. Why does CMS want this information?

Since 1980, Medicare has been a "secondary payer" for any medical treatment that is covered by a "primary payer." This means that if an institution owes an obligation to pay medical bills to a claimant (whether as an employer for workers' comp, as a self-insured tortfeasor, or as a liability insurer), the law requires the liable party to pay before Medicare does.

Furthermore, if Medicare makes a "conditional payment" pending resolution of liability, the law *requires* that primary payers reimburse Medicare as the secondary payer. In practice, however, most liability carriers and self-insurers pay claimants directly in exchange for a release of all liability, and Medicare is not reimbursed because it never knows of the payments. Medicare intends to use these new data to pursue recovery from primary payers.

## 7. What happens if an RRE does not report a required payment?

Congress has imposed a \$1,000 *per claim, per day* penalty for the failure to timely report a payment as required. There is no "safe harbor" in the statute, meaning that even good faith efforts to report payments could still result in the fine if the report is erroneous.

## 8. What steps should an RRE take at this point?

The preparation for Medicare mandatory reporting can be time intensive, is subject to specific deadlines, and generally requires involvement from your information technology (IT) department.

The initial steps include:

- Registering as an RRE between May 1, 2009, and September 30, 2009, with the COBC at its secure website
- Collecting data on all payments to Medicare beneficiaries on or after January 1, 2010
- Coordinating with your IT staff (or an outside contractor) to facilitate testing with the COBC-assigned Electronic Data Interchange (EDI) representative

The entire process can be found in the *MMSEA Section 111 USER GUIDE*, located on the CMS website.

## 9. Can an agent be used to do the reporting for an RRE?

Yes, but CMS has been adamant that an RRE cannot deflect responsibility to the agent for initial registration or subsequent reporting. Therefore, while an agent may be designated during the registration process and may be used by an RRE for data collection, data storage, and quarterly reporting, the RRE remains ultimately responsible if the agent errs during the performance of its duties.

## 10. Will UE carry out institutional reporting obligations?

No. Although UE is an RRE and will be reporting all required payments that it makes itself, UE cannot anticipate payments its members make for claims below the level at which UE's insurance obligation attaches. (Remember, the MMSEA reporting threshold declines over the next three years from \$5,000 to \$2,000 and then to \$600.)

Because the definition of who must report is so broad and the projected threshold amounts for reporting are so low, every institution should begin the registration process and be prepared to report payments as required.

## 11. Are there other resources besides the User Guide?

Yes. The CMS website listed above (see paragraph two), collects prior teleconference audio transcripts, CMS alerts, and other material that will help guide you in preparing for this new mandate. There are also many private vendors who offer resources and services.

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