

NEW REPORTING REQUIREMENTS ON MEDICARE CLAIMS

There has been recent legislation concerning Medicare that may have major impact on our clients beginning 7/1/2009. Attached is a copy of the law.

Beginning 7/1/2009, insurers (including liability, self insured, no fault and workers' compensation), will be required to report to Medicare claims involving a Medicare beneficiary. Information concerning the identity of the claimant, and other information to be determined by the Secretary of the Department, must be submitted by a certain deadline after the claim is resolved through a settlement, judgment, award or other payment. The exact information to be submitted and the specific deadline after the information is due has yet to be determined by the Secretary.

The penalties for failing to comply are severe - \$1,000 per day, per claimant. Moreover, the insurer has the responsibility of determining if the claimant is a Medicare beneficiary.

Until further procedures are established by the Secretary, it is difficult to predict how this may all play out. Obviously, the insurer would be wise to obtain from the claimant all necessary releases to obtain Medicare information as soon as possible in the negotiation process. Settlements reached after the effective date of the new law should not be finalized until the claimant's Medicare status is confirmed.

Have a question or issue you'd like to see in a future newsletter? Email Stephan Lampasso in our Fort Lauderdale office at slampasso@mcconnaughhay.com.

The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.

UPCOMING SEMINARS

Florida Workers' Compensation and General Liability Issues: 2008 Claims Handling Update
Atlanta, Georgia
03/05 & 03/06/2008

Registration information is available online at www.mcconnaughhay.com.

ADDITIONAL RESOURCES

At McConnaughay, Duffy, Coonrod, Pope & Weaver, P.A., we are dedicated to advancing the law surrounding workers' compensation, employment litigation, product liability, and general civil litigation. To foster the exchange of information and knowledge, we provide practitioners, employers, insurers and laypeople with comprehensive online resources relevant to these practice areas.

For access to our additional resources, [click here](#).

One Hundred Tenth Congress
of the
United States of America

AT THE FIRST SESSION
*Begun and held at the City of Washington on Thursday,
the fourth day of January, two thousand and seven*

An Act

To amend titles XVIII, XIX, and XXI of the Social Security Act to extend provisions under the Medicare, Medicaid, and SCHIP programs, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **IN GENERAL.**—This Act may be cited as the “Medicare, Medicaid, and SCHIP Extension Act of 2007”.

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TITLE I—MEDICARE

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SEC. 111. MEDICARE SECONDARY PAYOR.

(a) **IN GENERAL.**—Section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)) is amended by adding at the end the following new paragraphs:

* * * *

“(8) REQUIRED SUBMISSION OF INFORMATION BY OR ON BEHALF OF LIABILITY INSURANCE (INCLUDING SELF-INSURANCE), NO FAULT INSURANCE, AND WORKERS’ COMPENSATION LAWS AND PLANS.—

“(A) REQUIREMENT.—On and after the first day of the first calendar quarter beginning after the date that is 18 months after the date of the enactment of this paragraph, an applicable plan shall—

“(i) determine whether a claimant (including an individual whose claim is unresolved) is entitled to benefits under the program under this title on any basis; and

“(ii) if the claimant is determined to be so entitled, submit the information described in subparagraph (B) with respect to the claimant to the Secretary in a form and manner (including frequency) specified by the Secretary.

“(B) REQUIRED INFORMATION.—The information described in this subparagraph is—

“(i) the identity of the claimant for which the determination under subparagraph (A) was made; and

“(ii) such other information as the Secretary shall specify in order to enable the Secretary to make an appropriate determination concerning coordination of benefits, including any applicable recovery claim.

“(C) TIMING.—Information shall be submitted under subparagraph (A)(ii) within a time specified by the Secretary after the claim is resolved through a settlement, judgment, award, or other payment (regardless of whether or not there is a determination or admission of liability).

“(D) CLAIMANT.—For purposes of subparagraph (A), the term ‘claimant’ includes—

“(i) an individual filing a claim directly against the applicable plan; and

“(ii) an individual filing a claim against an individual or entity insured or covered by the applicable plan.

“(E) ENFORCEMENT.—

“(i) IN GENERAL.—An applicable plan that fails to comply with the requirements under subparagraph (A) with respect to any claimant shall be subject to a civil money penalty of \$1,000 for each day of noncompliance with respect to each claimant. The provisions of subsections (e) and (k) of section 1128A shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a). A civil money penalty under this clause shall be in addition to any other penalties prescribed by law and in addition to any Medicare secondary payer claim under this title with respect to an individual.

“(ii) DEPOSIT OF AMOUNTS COLLECTED.—Any amounts collected pursuant to clause (i) shall be deposited in the Federal Hospital Insurance Trust Fund.

“(F) APPLICABLE PLAN.—In this paragraph, the term ‘applicable plan’ means the following laws, plans, or other arrangements, including the fiduciary or administrator for such law, plan, or arrangement:

“(i) Liability insurance (including self-insurance).

“(ii) No fault insurance.

“(iii) Workers’ compensation laws or plans.

“(G) SHARING OF INFORMATION.—The Secretary may share information collected under this paragraph as necessary for purposes of the proper coordination of benefits.

“(H) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary may implement this paragraph by program instruction or otherwise.”

(b) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall be construed to limit the authority of the Secretary of Health and Human Services to collect information to carry out Medicare secondary payer provisions under title XVIII of the Social Security Act, including under parts C and D of such title.

(c) IMPLEMENTATION.—For purposes of implementing paragraphs (7) and (8) of section 1862(b) of the Social Security Act, as added by subsection (a), to ensure appropriate payments under title XVIII of such Act, the Secretary of Health and Human Services shall provide for the transfer, from the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395t), in such proportions as the Secretary determines appropriate, of \$35,000,000 to the Centers for Medicare & Medicaid Services Program Management Account for the period of fiscal years 2008, 2009, and 2010.