

# TRISTAR Update

December 2008

## Mandatory Insurer Reporting Requirement Update

On December 29, 2007, President Bush signed into law the Medicare, Medicaid and SCHIP Extension Act of 2007 ("Act"). The most immediate impact of the Act involves new reporting requirements for liability, no-fault and workers' compensation insurers, commonly referred to as "MMSEA Mandatory Insurer Reporting" or "SCHIP reporting". Section 111 of the Act, codified at 42 U.S.C. 1395y(b)(8), creates a reporting requirement to the Centers for Medicare and Medicaid Services (CMS) that carries a \$1,000 per day penalty for non-compliance. The Act also requires that the Medicare status of a claimant be determined at the time of settlement, judgment, award or other payment.

This new, uncertain requirement has created many questions for our clients. This Q&A format has been created to provide the most up to date information available and outline proactive steps you can take now until additional guidance is promulgated by CMS.

### **Who is subject to the Section 111 Reporting Requirement?**

The Secretary of Health and Human Services extends the reporting requirement to "an applicable plan." "...[T]he 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."

CMS uses the term Responsible Reporting Entity (RRE) to describe the fiduciary or employer and clearly states that while the requirement to report may be delegated to "an agent," the ultimate responsibility for reporting rests with the RRE. Most importantly, it is the RRE's responsibility to register with CMS, via a secure website, between May 1, 2009 and June 31, 2009.

### **What claims information must reported?**

CMS has published an Interim Record Layout (see link below) that contains the data fields CMS would like to capture on all claims. To date, there has been much discussion as to whether certain data elements are practical to collect for every type of claim. CMS has indicated that the record layout is subject to change as they evaluate input from all stakeholders. For now, this document provides a reasonably complete guide to the type of information CMS will be looking to capture from each claim.

*Action Item: The registration process will be relatively simple and straightforward. Consideration should be given now to naming a designated agent to assist with on-going reporting. CMS has indicated that this choice must be made during the registration period but may be changed at a later date with a corresponding transition period.*

*Action Item: Review the interim record layout to identify potential gaps in data collection for all lines of business.*

### **When must the data be reported?**

Claim data for Medicare beneficiaries must be reported at the time of settlement, judgment, award or other payment. Once the claims identified as meeting the requirements have been initially reported, follow up reporting will be due every quarter until the claim is closed. At the time of closure, a final report will be sent to CMS, during the required reporting interval, stating the specifics on the claim closure.

Beginning 10/01/2009, claims for which an RRE has payment responsibility as of 07/01/2009, will be reported via electronic data interchange (EDI) during a prescribed reporting window. Several CMS sponsored teleconferences, beginning January 22, 2009, will be held to offer additional guidance on this process.

A limited extension of a one year grace period, until 07/01/2010, will only be given to RRE's when ongoing payment responsibility has been accepted with the claim subject to further payments as of 7/1/09, but information needed to determine the Medicare status of the employee is unknown and incomplete. On determination of the Medicare status, reporting is to be completed at the next required interval, but is not to be delayed beyond the third calendar quarter 2010 file submission.

### **How can we determine a claimant's Medicare status?**

Determining a Claimant's Medicare status is the most formidable obstacle to overcome. CMS is seeking a legal opinion from its general counsel regarding providing an online query function to RREs and their agents. Further information has been promised by the end of the year. For now, our focus is on claims involving claimants over the age of 65 and/or with date of injury or exposure prior to July 1, 2007.

### **Next Steps**

TRISTAR is committed to providing on-going updates concerning the MMSEA reporting. We are working on solutions to assist you in complying with these new regulations. Once CMS has finalized the reporting requirements, we will get back to you with options on how to fulfill your reporting requirements.

Although CMS has made substantial progress communicating how they intend to implement Section 111, much still remains to be decided. CMS has repeatedly indicated that enforcement of the \$1,000 per day penalty is not their primary concern. They are seeking complete and accurate data reporting and appear to be providing the tools and communication necessary to accomplish their goal. As the situation develops, we will continue to provide updates.

### **Where to go for the most up to date information?**

CMS has created a dedicated webpage where all new guidance will be released. The webpage can be accessed at <http://www.cms.hhs.gov/MandatorYlnsRep>. Information specific to liability, no-fault and workers' compensation claims is contained in three important documents:

[October 21, 2008 - MMSEA111 - Interim Record Layout Information For Liability Insurance \(Including Self-Insurance\), No-Fault Insurance and Workers' Compensation \[PDF 456KB\]](#)

[MMSEA111 Town Hall Transcript - October 29, 2008 - Teleconference Event for Liability Insurance \(including Self-Insurance\), No-Fault Insurance, and Workers Compensation \[402 KB\]](#)

[August 1, 2008 - MMSEA111 - Supporting Statement \[PDF, 104KB\]](#)

"MMSEA 111 - What's New" contains the latest information including upcoming "Town Hall" teleconference dates. These teleconferences provide valuable opportunity to hear directly from CMS officials and pose questions or concerns directly to the program managers.

Additional documents are included in the "Downloads" section at the bottom of the page. Questions concerning the implementation timelines and the registration process are addressed.