



Custom Tailored Legal Solutions for Your Business

DUNLEVEY, MAHAN & FURRY

www.dmfdayton.com • (937) 223-6003

Reporting Workers' Compensation Claims to Medicare: New Requirements for Self Insured Employers

Overview

Because Medicare does not want to absorb costs of treating work injuries, new regulations require self insured employers to register with Medicare and report any workers' compensation claims in which Medicare could end up paying for treatment. Failure to report these claims may result in staggering fines. Furthermore, self insured employers must submit claim settlements for Medicare approval to ensure that enough settlement money is set aside for future healthcare costs. Again, Medicare does not want to provide healthcare for conditions caused by a work injury.

Self insured employers should go to the website for The Center for Medicare Services to learn more (see Link

#1 at the end of this document). However, as you might expect, the information about these requirements is incomplete and cryptic, at best. What follows is a plain English *introduction* to these new requirements. This is not intended to be a substitute for wading through the sea of documents found at the Center for Medicare Services web site. Every self insured employer must become familiar with these requirements.

Self Insured Employers Must Register themselves. Attorneys and third party administrators cannot do this for them.

Self Insured Employers Must Register with Medicare

First, self insured employers must electronically register with the Center for Medicare Services between May 1, 2009 and June 30, 2009. The registration webpage has not been created yet so there is no web address at this point. Dunlevey, Mahan & Furry will alert you as soon as we see that the registration web address is available. Once the website is up and running, self insured employers must go to that website, after May 1, 2009 and before June 30, 2009, and complete the registration for themselves. No agent, such as a third party administrator or an attorney, is permitted to register on behalf of a self insured employer.

As part of the registration process, each self insured employer must designate an authorized representative to complete the web registration process. That individual (perhaps whoever is responsible for managing the workers' compensation claims) should familiarize themselves with the information required for registration as soon as possible, before May 1, 2009. This will help ensure that you have collected all information required to register. To learn more about the information required for registration, go to The Center for

Medicare Services' web-based document regarding registration at Link # 2. The authorized representative will serve as the self insured employer's administrative contact for the Center for Medicare Services and will obtain user IDs for any employees who may access the self insured employer's account.

Beware: registration will not be easy. Given that this is a new, highly technical, and complex program involving huge government databases, countless bureaucrats, and thousands of self insured employers, registration may likely prove to be difficult. All self insured employers should familiarize themselves with the registration process as soon as possible.

Quarterly Reports of Workers' Compensation Claims

After registration, and between July 1, 2009 and September 30, 2009, the Center for Medicare Services will test the electronic reporting procedure. The Center for Medicare Services will contact self insured employers about this testing. There is no information currently available regarding this test period, or what self insured employers must do during that time. Again, please stand by: Dunlevey, Mahan, and Furry will follow this for any updates.

The Center for Medicare Services will also contact registered self insured employers regarding the specific time period to submit the first quarterly report. Self insured employers will electronically submit their first quarterly report at the pre-determined time, some point between October 1, 2009 and December 30, 2009. Unlike the registration process, self insured employers may designate an agent, such as their third party administrator, to do this

reporting for them. Self insured employers should contact their third party administrators immediately to find out if they will provide this service.

Medicare will penalize any self insured employer up to \$1000.00 per day for each and every claim that is not reported to Medicare. It appears that the Center for Medicare Services will aggressively enforce the penalty. Therefore, if the third party administrator is assuming the reporting responsibility, self insured employers must carefully monitor the reports, because the employer, and not the third party administrator, will incur the penalty.

Claims that Self Insured Employers Must Disclose in Their Quarterly Reports

Generally, self insured employers must inform Medicare of any claim where the claimant is or was a Medicare beneficiary. (Hereafter referred to as "reportable claims.")

A "Medicare beneficiary" is:

1. A claimant over 65 years old;
2. A claimant who has been on social security disability for more than 24 months; OR
3. A claimant with end-stage Renal Disease (kidney failure and they are on dialysis).

Events that Trigger the Reporting Requirement

Self insured employers must disclose a reportable workers' compensation claim twice – at the time the employer becomes responsible for the claim, and again when the self insured employer's responsibility ends for any part of

MEDICARE AND SELF INSURED EMPLOYERS

the claim, through settlement, court judgment, or claim inactivity.

EXAMPLE 1: *Deliliah, a 65 year old claimant files a claim, which is allowed by the Ohio Bureau of Workers' Compensation. Sampson Corp., Deliliah's self insured employer, will have to report that claim in the first quarterly report due after the Bureau of Workers' Compensation allows the claim. Assume that Sampson Corp. appeals the allowance into court. If Sampson Corp. defeats or settles Deliliah's claim (see also Example 4), then Sampson Corp. will have to report that event in the first quarterly report due after settlement or court judgment. If Deliliah's claim is not defeated or settled, then Sampson Corp. will not have to report Deliliah's claim to Medicare until her claim becomes inactive.*

In a denied reportable claim that is ultimately settled, the self insured employer will only have to report the settlement in the first quarterly report due after settlement.

EXAMPLE 2: *Deliliah's claim is never allowed administratively (not by the Bureau of Workers' Compensation or the Industrial Commission). Sampson Corp. has no duty to disclose the claim because they were never responsible for it. Deliliah appeals the claim denial into court. Sampson Corp. settles the case, (see also Example 4) and her claim, by paying Deliliah \$5,000. Sampson Corp. will have to report the settlement in the first quarterly report due after claim settlement. This will be the only time that Sampson Corp. has to report this claim because it was never allowed.*

Self insured employers will not have to report claims that are never allowed and never settled.

EXAMPLE 3: *Deliliah's claim is never allowed administratively. She does not appeal into court, and Sampson Corp. neither settles her claim, nor makes any payment on or toward this claim. Sampson Corp. will never have to report this claim to Medicare.*

Existing Claims as of July 1, 2009

Self insured employers must also disclose any Medicare beneficiary claims existing as of July 1, 2009 in the initial disclosure report, due sometime between October 1, 2009 and December 30, 2009. However, if the self insured employer does not have the claimant's social security number at that time, or if they do not know whether an existing claimant is a Medicare beneficiary, then the self insured employer can wait to report existing claims until the third quarter of 2010.

Assuming that self insured employers have existing (and active) claims to report to Medicare, the first report will likely contain more data than subsequent reports. Subsequent reports need not list already reported existing claims, only new claims, or existing reportable claims that have resolved.

Existing Claims Where Claimant Becomes a Medicare beneficiary

Self insured employers must also disclose existing claims if the claimant becomes a Medicare beneficiary. Conceivably, all workers' compensation claimants may become Medicare beneficiaries, simply by virtue of living to age 65 (or if they receive social security disability

for 24 months, or suffer from end stage kidney disease). Current information indicates that self insured employers must, therefore, monitor existing claims to determine if the claimants have become Medicare beneficiaries. Once a claimant is a Medicare beneficiary, then their claim should be reported to the Center for Medicare Services.

Web-Based Training

The Center for Medicare Services is offering web-based computer training for self insured employers to familiarize themselves with the reporting procedure. Follow Link #3 for more information, or call the Coordination of Benefits Contractor Electronic Data Interchange department at 646-458-6740.

Medicare's Interest in Claim Settlements

The Center for Medicare Services also wants to know about settlement amounts in reportable claims, and may have to approve the settlement. For example, settlements of all workers' compensation claims over \$25,000, *where the claimant is a current Medicare beneficiary*, require Medicare approval, and may also require a Medicare Set Aside.

Medicare Set Asides of Medicare Beneficiaries' Claims

A Medicare Set Aside is a specific amount of the settlement dedicated to future healthcare costs arising from the conditions allegedly caused by the work injury. The Center for Medicare Services does not require any particular kind of account to establish the set aside, but trusts and custodial accounts are

commonly used for this purpose. Regardless of the type of account, the Center for Medicare Services must approve the amount of the set aside to ensure that it is adequately funded.

***EXAMPLE 4:** Sampson Corp. and Deliliah, decide to settle her claim for \$45,000, partly because Sampson Corp. does not want responsibility for future costs of treating the work injury. Remember, as a 65 years old, Deliliah is a Medicare beneficiary and Sampson Corp. was required to initially report the claim when it was allowed. When the parties settle the claim, Sampson Corp. must notify Medicare because its responsibility for the claim has ended. Additionally, Sampson Corp. must create a Medicare Set Aside and seek Medicare's approval of the Set Aside amount before the settlement because the settlement exceeds \$25,000, and because there will be future costs to treat the work injury.*

Medicare Set Asides of Potential Medicare Beneficiaries' Claims

If the claimant is *not* a Medicare beneficiary, then a Medicare Set Aside is only required if settlement exceeds \$250,000, and there is a "reasonable expectation" that the claimant will enroll in Medicare within the next 30 months.

A "reasonable expectation" that a claimant will be a Medicare beneficiary exists if the claimant:

1. Has applied for social security disability;
2. Is appealing a denial of their social security disability application;
3. Is 62 ½ years old (meaning that in 30 months they will get Medicare due to their age); OR

MEDICARE AND SELF INSURED EMPLOYERS

4. Has end-stage Renal Disease (kidney failure and they are on dialysis).

Since most workers' compensation claims settle for less than \$250,000, a Medicare Set Aside will usually only be necessary when the claimant is already a Medicare beneficiary. However, claimants and employers are still required to consider Medicare's interest and ensure that Medicare will not have primary responsibility for payment of healthcare costs associated with a settled workers' compensation claim.

Medicare Set Asides Not Required When Medical Aspects Remain Open.

A Medicare Set Aside is not required when the medical aspect of a claim is not settled. That is, if all other issues are settled – other than future healthcare – and the employer agrees to cover future healthcare costs for the conditions allowed in the claim, then a Medicare Set Aside is not required. Similarly, if there will be no future healthcare costs, and settlement is for liability and past healthcare costs only, then no Medicare Set Aside is necessary.

Submit Medicare Set Aside proposals to:

The Center for Medicare Services
C/O Coordination of Benefits Contractor
P.O. Box 33849
Detroit, MI 48232-5849

Settlements that Must be Approved by Medicare (without Set Aside Required)

Medicare must approve settlements of any Medicare beneficiary's workers' compensation claims that *exceed* \$25,000, even if the settlement does not require a Medicare Set Aside. To arrange Medicare approval, or to obtain additional information, contact the Coordination of Benefits Contractor at 1 (800) 999-1118.

However, Medicare will not review, and need not approve, settlement of a Medicare beneficiary's workers' compensation claim when the settlement is *less than* \$25,000. This does not, however, release the parties from protecting Medicare's interest. For example, the parties may still have to establish a Medicare Set Aside when settling a Medicare beneficiary workers' compensation claim for \$20,000 if some portion of that settlement amount is intended for future medical expenses. For a thorough discussion of this topic, follow Link # 4.

Clickable Links to Websites Referenced Above

1. <http://www.cms.hhs.gov/MandatoryInsRep/>
2. <https://www.cms.hhs.gov/MandatoryInsRep/Downloads/RegistrationOverview.pdf>
3. http://www.cms.hhs.gov/MandatoryInsRep/05_Computer_Based_Training.asp
4. http://www.cms.hhs.gov/WorkersCompAgencyServices/04_wcsetaside.asp