

INDUSTRY NEWS BULLETIN



Gould & Lamb, LLC
A Medical-Financial Services Company

In a continuing effort to help keep you up-to-date on happenings in Medicare we offer the following summary of important and timely information.

On 12/29/2007, President Bush signed the "Medicare, Medicaid, and SCHIP Extension Act of 2007". The bill was sponsored by Senator Chuck Grassley (R-IA) and was passed in the House (12/19) and Senate (12/18) before the signing by the President. The bill passed unanimously in the Senate and 411-3 in the House. Grassley has long been an advocate for increased Medicare Secondary Payer enforcement and the passage of this bill into law has ramifications for Liability Insurance, Self Insurance, No Fault Insurance, and Workers' Compensation Insurance programs nationwide. To view a complete attachment of the bill [click here](#).

Of major importance to liability, self, no fault, and workers' compensation insurers is Section 111 ("Medicare Secondary Payor"), paragraph 8 ("Required Submission of Information by or on behalf of Liability Insurance (including Self-Insurance), No Fault Insurance, and Workers' Compensation Laws and Plans"), items (A)-(H). Here are a couple key sections of the law:

(A) REQUIREMENT - On or 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 (the law was passed on 12/29/07, making the following requirements begin July 1st, 2009), 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 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 appropriate determination concerning coordination of benefits, including any applicable recovery of 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).

(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 \$1000 for each day of noncompliance** with respect to each claimant (in addition to any other penalties prescribed by law and in addition to any other Medicare secondary payer claim under this title with respect to an individual).

What does it all mean?

Beginning on 7/1/2009; Liability Insurers, Self-Insurers, No Fault Insurers, and Workers' Compensation Insurers must determine Medicare beneficiary status on all claims and report those claims involving a Medicare beneficiary to the Secretary at the time of settlement, judgment, or award. If the reporting is not done in a timely manner, the Secretary may enforce a civil money penalty of \$1000 per day per claim. Beyond the reporting requirements and financial penalties, this now provides Medicare huge amounts of previously difficult to collect primary payer data on liability, self-insured, no-fault, and WC claims which can be utilized to enforce their Secondary Payer rights. It will be very easy for Medicare to review settlements, judgments, and awards to determine if their interests were adequately considered in the settlement. Workers' Compensation has faced a similar situation (on a smaller scale) since 2002 with Medicare Set-Aside Arrangements. The scope of this law is much broader than MSAs though and adds liability and no-fault settlements into the process, with stiff financial penalties for non-compliance.

What can be expected?

The Secretary has two issues to address in this law, (1) what data to collect and (2) what timeframe to receive the information post-settlement, judgment, or award. The timing of the collection of data (post-settlement, judgment, or award) suggests that a copy of the settlement agreement, judgment or award will be required submission to the Secretary. Since the intent is to enforce Medicare's Secondary Payer rights, it is reasonable to assume injury information, diagnosis codes, and primary payer data will be required. The language is broad enough to allow for the collection of medical information to determine if the settlement adequately protected Medicare's interest. It is likely that the timeframe will be shortly after the date of settlement, judgment, or award, but may be more frequent.

What can an insurer do?

In that the cost for non-compliance is great, insurers need to formulate a plan for compliance well in advance. Imagine that a case settled on 7/2/2009 and involved a Medicare beneficiary; if this case was not identified and reported to Medicare until 7/2/2011, the civil money penalty could be \$730,000.00 (depending on the Secretary's definition of timing and data). And rest assured, Medicare has a number of resources available to help them discover noncompliant cases long after they have settled. But the risk goes beyond just reporting correctly. By giving the data to Medicare, the conditional payments related to the injury and adequacy of the settlement will be easy to review. ***The resolution of conditional payments and the sufficiency of consideration to Medicare's interests must be addressed before settling and reporting data to the Secretary to avoid having Medicare seek additional monies post-settlement.***

A partner that can identify Medicare status quickly, assist with addressing conditional payments, and demonstrate adequate consideration of Medicare's interests in the settlement will be a valuable asset over the next 18 months and in the years to follow.

Gould & Lamb has been providing Medicare related services to the insurance industry for years and is the leader in MSP/MSA compliance program development. Feel free to contact John Williams or Nick Collins in our office at 866-672-3453 x1307 / x1332 to discuss how we can help.

As always, we at Gould & Lamb appreciate your business and welcome your feedback and comments. Should you have any questions, please contact us directly at: **866-MSA-FILE (672-3453)** or at clientservices@gouldandlamb.com.