



## The Vita Viewpoint Important Information for Decision Makers

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### **New Medicare Secondary Payer Reporting Requirement**

#### **Overview**

Medicare Secondary Payer (MSP) rules dictate when a group health plan must pay primary benefits and when it must pay secondary benefits for individuals covered under Medicare **and** a group health plan. The rules also make it abundantly clear that employers are not allowed to offer incentives to employees entitled to Medicare for opting out of the group health plan.

When first introduced, Medicare served as the primary payer of medical benefits for virtually all people entitled to Medicare, while the group health plan (if any) was secondary. That mode of operation changed in the 1980's when Congress discovered that the Medicare program was under funded. Now, in most circumstances, the group health plan is the primary payer of medical benefits for those entitled to Medicare **and** covered by a group health plan. There are exceptions to the above rule – the most important of which is for employers who employ fewer than 20 employees. For those employers, Medicare is the primary payer.

Given the current cost of health care and the propensity for increased consumption of health care services as people age, the ownership of these benefit payments is a significant budgetary concern. The Centers for Medicare & Medicaid Services (CMS) is not interested in paying for any benefits that are the responsibility of a group health plan.

#### **Current Reporting**

Currently, there is no reporting requirement. The CMS currently uses a data match program with the IRS and the Social Security administration to identify individuals who may be covered by a group health plan. Once someone is identified, a questionnaire is sent to the employer for completion to confirm the individual's status. There are civil penalties of up to \$1,000 for each person the employer has not reported or has reported incorrectly. Ignoring this questionnaire can be quite costly and is not advisable. Additionally, we have had employers that were required to reimburse claims paid by Medicare that should have been paid by the employer sponsored plan; this has resulted in employer cost of tens of thousands of dollars.

#### **New Requirements**

Beginning January 1, 2009, insurers and Third Party Administrators (TPAs) of group health plans will be required to gather information from plan sponsors and participants to isolate those situations when the group health plan is primary. The insurer and/or TPA will then be required to submit this information to the U.S. Department of Health & Human Services (HHS), which oversees the CMS. The law gives the Secretary of the HHS the power to decide what information will be required and how and when the information will be reported.

Although the reporting requirements are vague, the penalty is not. The law includes a civil penalty of \$1,000 for each day of non compliance for each individual that should have been reported.

#### **Commentary**

Additional reporting is never welcome news, but it is too early to tell just how unwelcome this news is. We will update you on the requirements of this new law once the HHS publishes them.

***For questions or additional information, please contact Vita Benefits Group at (650) 968-8811.***