



Impact of the Secondary Payer Act on Workers' Compensation

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The time has come to consider the long-term impact of the Medicare Secondary Payer Act on workers' compensation claims. Five years ago, Medicare reinvigorated its focus on the Secondary Payer Act by imposing reporting requirements under Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007, which first became effective May 1, 2009. Section 111 added mandatory reporting requirements for liability insurers (including entities that self-insure), no-fault insurers and workers' compensation insurers (nongroup health plan insurers or NGHPs) providing coverage to Medicare beneficiaries. Workers' compensation insurers, including those employers that self-insure their workers' compensation exposure, are obligated to notify Medicare about "settlements, judgments, awards or other payment from liability insurers (including self-insurers), no-fault insurers and workers' compensation" received by or on behalf of Medicare beneficiaries. The Section 111 reporting requirements is an addition to the existing Medicare Secondary Payer law and corresponding regulations.

The Secondary Payer Act describes situations where another insurer has primary payment responsibility for care provided by a Medicare beneficiary or a potential beneficiary. Medicare's reinvigorated focus on the Secondary Payer law threatens to significantly increase the cost of workers' compensation for employers.

It is not yet known whether Medicare will begin looking backward to try to recover funds. But the potential that Medicare may do so counsels employers to take some practical steps, such as ensuring that workers' compensation claim files and records are preserved. This will allow for an employer to defend itself against an argument from Medicare that the condition for which it paid for treatment was the same one the patient received on the job some years ago.

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