

Deadline looms for firms to register claims data

Effort to curb Medicare costs raises questions

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Insurers and self-insured employers face a Dec. 31 deadline to register with a federal agency, but numerous questions remain about what workers compensation and liability claims data must be fed into the Medicare system, several experts say.

Insurers and self-insured employers identified as responsible reporting entities must register with the U.S. Centers for Medicare & Medicaid Services by year-end to comply with Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007.

The mandates stem from Medicare secondary payer laws and ongoing efforts allowing CMS to track medical claims payments to make certain that insurers and employers paying claims do not shift costs to Medicare.

Starting in the first quarter of 2010, the law also requires claims payers to provide CMS with test data files for liability, workers compensation and no-fault claims that have a medical-expense component and involve Medicare-eligible or potentially Medicare-eligible beneficiaries.

The reporting and data feed requirements reach across the entire liability industry, said Roy Franco, director of risk management strategies for supermarket chain Safeway Inc. in Pleasanton, Calif.

Even directors and officers liability coverage would be affected if, for example, an employment practices claim contained a psychological damages component, said Mr. Franco, who also is a member of the Risk & Insurance Management Society Inc.'s external affairs committee and is co-chairman of the steering committee for the Medicare Advocacy Recovery Coalition, a diverse coalition that formed in 2008 because of the 2007 law.

Insurers and self-insured employers failing to comply face fines of up to \$1,000 per claim per day for failing to comply with the law.

But precisely how CMS will define “noncompliance” and apply fines remains among many significant unknowns, said Katie A. Fox, compliance and resolution unit manager in Parker, Colo., for MedInsights Inc., a managed care services unit of GAB Robins Group of Cos.

Documentation does not exist explaining whether fines would be triggered only when entities fail to submit an entire claim file, or if such a fine could be imposed for providing a claim file that lacks certain data, experts say.

“We know that there is a \$1,000 per day (fine), but when and where and what triggers the \$1,000 per day” are not known, said Ms. Fox, who also is co-chair of MARC's steering committee. “We are all interested in understanding that level of financial impact.”

There is a lack of clarity about how reporting to CMS will be carried out by a broad array of liability insurance entities, including captive insurers and risk-sharing pools, several sources said. Insurance industry providers have added to the confusion because they have misunderstood or misinterpreted reporting requirements, they added.

“It has been very confusing,” said Steve Bent, executive director of the Texas Assn. of Responsible Nonsubscribers, an Austin-based group of employers that provide workplace injury benefits. “It seems like it would be difficult for (CMS) to address all (liability claims) situations. But on the other hand, it sure is difficult for everybody to prepare to comply when some of the answers are still up in the air.”

CMS has cooperated with stakeholders and has worked to improve the process and address questions, Mr. Bent and other industry sources said.

CMS, which did not respond to an interview request, may be overwhelmed with implementing the program across the numerous types of coverage arrangements within the liability industry, the sources added.

Still unresolved are reporting claims involving multiple insurers and mass tort cases with multiple claimants about which settlement payers usually know little.

MARC, which formed to improve the Medicare Secondary Payer program, sent letters to CMS in August and again in October that asked for additional clarity and recommended that directions on complying with the reporting requirements be improved.

MARC asked for more information on “how the Section 111 reporting system will treat all types of captives,” because some captive definitions that CMS has relied on “may not be accurate and, in any event, do not completely address the common captive situations which occur.”

MARC also recommended that CMS help self-insurance pools to resolve claims without the involvement of the participating pool member.

For mass tort cases, MARC suggested that funds typically established by trial courts and handled by administrators retained by plaintiffs attorneys act as the RRE, rather than the insurer or self-insurer covering the claims.

In response, CMS created a mass tort group comprised of industry representatives to help “hash out the areas of ambiguity,” Ms. Fox said.

A CMS “user guide,” containing input from the tort group and other improvements hopefully will be available soon, but little time remains as the deadlines approach, several sources said.

Another unresolved issue is who the RRE is when a fronting policy, foreign insurer or employer is involved, said Jeffrey Hames, assistant vp and implementation project manager in Memphis, Tenn., for Sedgwick Claims Management Services Inc.

Even the Dec. 31 deadline for registering as an RRE is ambiguous, Mr. Hames said.

CMS initially set June 30 as the deadline for RREs to register, documents show. That was extended to Sept. 30 and then to the end of this year when CMS recognized many self-insurers and insurers were awaiting information before registering.

But CMS has not produced official written communication stating that it extended the deadline to Dec. 31, Mr. Hames said. Instead, CMS first articulated the “unofficial” extension indirectly during one of several telephone conference calls held to answer questions.

“They didn't extend the registration deadline,” Mr. Hames said. “What they said is, 'We won't penalize anyone as long you can make sure you have registered in enough time to get us a test file in the first quarter of 2010.' Then they said in another town hall call (that) their expectation is that you would complete registration by Dec. 31.”

Many questions raised in those meetings remain unanswered and affect how insurers and self-insureds program their computer systems to report data, sources said.

Although many clients launched compliance efforts early on, other entities “have not registered yet because they are still waiting for information from CMS,” Mr. Hames said.

There are exemptions for small employers.

With so much uncertainty, however, CMS is likely to show leniency during the early phases of implementation, sources said.

Unofficially, indications are that entities can avoid the potential penalties by making a good-faith effort to comply, Mr. Bent said.