

MARKET BULLETIN

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Title	U.S. Medicare reporting and registration requirements
Purpose	To advise the Lloyd's market of the anticipated signing in of the Strengthening Medicare and Repaying Taxpayers ("SMART") Act, and the impact on the Lloyd's market.
Type	Event
From	Rosemary Beaver, Head of International Regulatory Affairs
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Deadline	Ongoing responsibility
Related links	Lloyd's market bulletin Y4481, 1 April 2011 Lloyd's market bulletin Y4526, 20 October 2011 Link to key regulatory projects section of lloyds.com - Medicare

Purpose

This is an update regarding the US Medicare Secondary Payer ("MSP") and mandatory insurer reporting requirements ("Section 111 Reporting"). The Medicare IVIG Access Act (the "Act"), H.R. 1845, which includes the provisions of the MSP reform proposal known as the Strengthening Medicare and Repaying Taxpayers ("SMART") Act, has passed the US Congress and is expected to be signed by President Obama in the coming weeks. The SMART Act proposal was introduced by the Medicare Advocacy Recovery Coalition ("MARC") which has been pursuing MSP reform for several years.

Background

Under the MSP provisions, Medicare is considered the secondary payer when a Medicare beneficiary's medical costs may be covered by certain additional primary plans, such as group health insurance, liability insurance, no-fault insurance and workers' compensation insurance. The MSP provisions were amended by the passing of the Medicare, Medicaid and SCHIP Extension Act (MMSEA) in 2007. Section 111 of the MMSEA imposed new, mandatory reporting requirements with respect to settlements, judgments and other payments made on behalf of Medicare beneficiaries. The Centers for Medicare and Medicaid Services ("CMS") agreed a lead only reporting format for the Lloyd's market and

Lloyd's syndicates are required to report claims to CMS via a specialist Medicare vendor under the reporting model implemented by the Lloyd's market.

Summary of Reforms

The key MSP reforms promulgated by the Act include:

- Statute of Limitations – The Act creates a 3 year statute of limitations for MSP actions. Under this provision, the CMS is now required to bring any action for reimbursement of conditional payments (i.e., payments made by Medicare for services for which another party is responsible) within 3 years from the receipt of notice of a settlement, judgment, award, or other payment.

This provision applies to actions brought by CMS on or after six months after the enactment of the Act.

- “Final” Conditional Payment Information – The Act requires CMS to create a web portal through which parties to a settlement (e.g., claimants and insurers with the consent of the claimant) can download final conditional payment information prior to settlement. A statement of conditional payment obtained from the web portal during the protected period defined by the Act will constitute the final conditional amount subject to recovery, provided that the settlement occurs within the protected period. The Act also provides a process through which parties may notify CMS if the parties believe there is a discrepancy in the conditional payment information provided through the web portal. Regulations implementing this process are required to be promulgated within 9 months of enactment of the Act.
- Discretionary Penalties – The Act changes the language regarding penalties for violations of the Section 111 Reporting requirements from mandatory to discretionary. Under this revision, CMS *may* impose a penalty of up to \$1,000 for each day of noncompliance with the Section 111 Reporting requirements with respect to each claim (the language of the MSP Act previously made the \$1,000 per day penalty mandatory). The Act also calls for CMS to publish a notice specifying the kind of practices for which the penalty will and will not be imposed; the Act calls for this notice to be published within 60 days of the enactment of the Act.
- Threshold for Reporting – The Act requires CMS to set an annual threshold reporting amount for the following year by 15th November of each year. Conditional payment reimbursement and Section 111 Reporting requirements will not apply to a settlement, judgment, award or other payment that falls below this threshold. The threshold is required to be set such that the amount recovered will exceed CMS's recovery expenses.
- Social Security and Health Identification Claim Numbers – The Act imposes an 18 month time period for phasing out the requirement that insurers provide claimants' social security and health identification claims numbers for Section 111 Reporting.

Impact for Lloyd's

Lloyd's welcomes the anticipated passage of the SMART reforms which are expected to make the MSP processes more efficient and easier for managing agents to navigate, although the risks associated have not diminished.

In particular, the ability to obtain final conditional payment information through a web portal is an important step forward. This should help the process by which managing agents ensure that their MSP compliance responsibilities are being met prior to claims' settlement.

In addition, the statute of limitations creates a greater clarity, provided the notification procedures are properly followed.

With respect to penalties for Section 111 Reporting violations, the change from mandatory to discretionary penalties is clearly a practical development. However, managing agents should keep in mind that this does not change CMS's authority to impose penalties, and penalties may still be assessed up to \$1,000 per day per claim for each day of non-compliance. CMS had indicated its intention to promulgate rules regarding penalties during 2013 even prior to the passage of the Act. These implementing rules will be helpful for shaping Section 111 Reporting best practices and will have a significant impact on how penalties will be assessed and the potential range of such penalties.

Conclusion

Lloyd's will continue to monitor the Act and will alert the market if and when it is signed by President Obama. As CMS implements the Act, Lloyd's will report to the market on relevant developments. Managing agents should continue to ensure that their MIR and MSP compliance responsibilities are being met as appropriate.

Contacts

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