



July 8, 2009

BUREAU CIRCULAR NO. 856

To All Members of the Bureau:

Re: **MEDICARE, MEDICAID AND STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP) EXTENSION ACT OF 2007**

This circular addresses selected potential implications of the statute in caption.

The above-referenced legislation (MMSEA) strengthens Medicare's position as a secondary payer of medical benefits to liability, no-fault and workers compensation claimants. As such, Medicare is entitled to require Primary Payers, including workers compensation insurers and self-insurers, to pay all of their medical entitlements under the applicable coverage(s) for claimants before Medicare pays medical costs for those same individuals. If Medicare inadvertently or erroneously pays benefits for which a Primary Payer is liable, Medicare is then entitled to receive reimbursement for those costs.

The law accomplishes its purpose in part by imposing new and extensive data reporting requirements on Primary Payers. Penalties for non-compliance with the new data reporting requirements are \$1,000 per day per unreported claim for as long as the claim remains unreported. Additionally, settlements applied to these lines of insurance are subject to Medicare Set-Aside provisions that mandate funds be included in the settlement and earmarked for future medical expenses. To protect Medicare's interests, these set-asides are subject to advance approval by the Center for Medicare & Medicaid Services (CMS).

Among many available resources for information about MMSEA, the following link may be useful:

http://www.cms.hhs.gov/MandatoryInsRep/04_Whats_New.asp

The Bureau has been contacted by individual carriers inquiring about assistance that might be available from the Bureau in complying with the CMS data reporting requirements. Given that the dataset proscribed in the MMSEA includes elements not reported to the Bureau by its members and the possibility that claims subject to reporting to CMS could be outside (either prior to or subsequent to) the range of claims currently or recently required to be reported individually to the Bureau, it is not possible for the Bureau to provide data

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fully responsive to the CMS requirements to carriers. Bureau members that identify specific informational needs that would be helpful in their compliance with the CMS reporting requirements and to which they believe the Bureau has access are encouraged to contact the staff shown below to explore possible cooperative efforts in such regard:

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The Bureau will continue to monitor developments concerning this legislation and welcomes input from members or other interested parties regarding new or additional information.

Timothy L. Wisecarver

President

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