

# Update

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## Employer health plans face MSP reporting requirements

Starting Jan. 1, 2009, group health plans must provide reports to the Centers for Medicare and Medicaid Services (CMS) about plan participants who also have Medicare coverage. These new reports will help CMS enforce Medicare secondary payer (MSP) rules, which generally make employer group health plans the primary payers of claims from active employees and their family members also covered by Medicare. Insurers, third-party administrators (TPAs), and self-insured and self-administered group health plans are primarily responsible for producing the reports. However, all employers offering group health coverage will feel the effects of the new requirements. This *Update* outlines how the mandatory MSP reports will affect group health plans and what employers can do to prepare.

### How did the new reporting requirements come about?

Although employer-sponsored group health plans must pay primary benefits for most Medicare-covered active employees and family members, ensuring compliance with the MSP requirement has proven problematic over time. Despite various voluntary initiatives to get information about Medicare beneficiaries' employer health plan coverage, CMS often lacks current and complete records for MSP enforcement. To remedy this situation, the Medicare, Medicaid and SCHIP Extension Act, enacted Dec. 31, 2007, established mandatory insurer reporting (MIR) [requirements](#) that go into effect Jan. 1, 2009.

The law broadly identifies the plans and entities responsible for reporting, but CMS has the job of fleshing out most details about what and how to report. While the lack of statutory specifics hinders compliance planning, CMS has the flexibility to set up a reporting system that meets employers' and other stakeholders' concerns. To keep affected parties informed, CMS has set up a [website](#) to supply implementation guidance.

## Which group health plans must meet the reporting requirements?

Though the law also applies to workers' compensation programs and no-fault auto and liability insurance, this *Update* focuses only on group health plans affected by the reporting requirements. Covered group health plans include any plan, whether insured or self-insured, that an employer sponsors or to which an employer contributes. This definition encompasses health plans for current or former employees, business associates or their families; union plans; and federal or state governmental plans. However, plans covering only retirees or other former employees aren't required to report.

## Who must report the information?

Insurers, TPAs, and administrators of group health plans that are self-insured and self-administered are responsible for submitting the new reports to CMS. Any of these entities can appoint an agent to handle reporting, and if a TPA manages an insurer's claim payments, then the TPA is responsible for the reports.

## What must be reported?

The law requires information about Medicare-covered individuals who also have group health coverage but doesn't specify exactly what must be reported. However, some clues appear on the new MIR website and in the records CMS currently seeks through [voluntary data-sharing agreements](#) (VDSAs) and [data-match](#) requests:

- **Identifying information.** CMS tracks Medicare-covered individuals by either their Social Security number (SSN) or health insurance claim number (HICN), so plans probably will need to provide one of these numbers. Plans that have stopped using SSNs as identifiers will need to work with their vendors to make this information available for reporting. CMS indicates that state laws prohibiting the use of SSNs do not affect federal reporting requirements.
- **Dependent information.** While MSP reports may eventually require SSNs for all employees and family members, employers with VDSAs only need to supply information on active plan enrollees who have reached age 55 (VDSA [User Guide](#), page 6). Accordingly, employers may want to begin collecting SSNs for all employees and spouses enrolled in the health plan. This would ensure adequate data if, as expected, CMS adopts the VDSA standard for the new reports. Regardless of the information CMS requires from employer group health plans, the ultimate determination of a covered individual's Medicare status is made by CMS, not the employer.

- **Other information.** CMS probably will require other information, such as employee and dependent names, insurance policy group and individual numbers, employer size, and employer and insurer contact information.

### **When and how will the reporting be done?**

Information on the MIR website indicates that CMS will require at least quarterly submissions of electronic reports through a secure website (still in development). Specific data formatting requirements for the reports have not been issued.

### **What penalties will apply?**

Failure to meet the reporting requirements can trigger civil penalties of \$1,000 for each day of noncompliance and for each individual omitted from the report. These penalties are in addition to any other penalties for improperly paid claims.

### **What are the next steps for employers?**

Employers should work with their group health plan insurers, TPAs or other reporting agents to monitor CMS guidance and identify the information needed by the Jan. 1, 2009, effective date. A first step might be to obtain employee and spouse SSNs at the plan's next annual enrollment period. Administrators of self-insured and self-administered plans should consider whether to handle the reports themselves or to contract with a third party to act as their reporting agent. In addition, employers should review and amend contracts with insurers, TPAs and other agents to assign liability for any noncompliance penalties.

Until the mandatory reporting system is up and running, employers should comply with any existing VDSAs or data-match requests. The new reporting system reportedly will resemble the one now used for VDSAs, so employers with agreements should have few or no new information-gathering tasks. While CMS hopes the new MSP reporting system will eliminate less efficient processes, such as data-match requests, employers must continue to complete any data-match requests received until a better system is in place.



## For more information

For additional information, please contact your Mercer consultant.

*This **Update** is for information only and does not constitute legal advice; consult with legal and tax advisers before applying this information to your situation.*

## Authors

**Amy Bergner** and **Fran Bruno** are attorneys and principals in Mercer's Washington Resource Group. Between them, Amy and Fran have several decades of experience in employee health and group benefits, including related state and federal laws. Amy can be reached at [amy.bergner@mercer.com](mailto:amy.bergner@mercer.com), and Fran can be reached at [fran.bruno@mercer.com](mailto:fran.bruno@mercer.com).

**Wade Symons** is a principal and senior attorney for Mercer's Northwest offices. With more than a dozen years of experience in employee benefits and ERISA, Wade's responsibilities include designing and drafting welfare benefit plans and related employee communications, providing advice on compliance with federal and state laws affecting health and welfare benefits, and analyzing potential tax and legal liability. He can be reached at [wade.symons@mercer.com](mailto:wade.symons@mercer.com).

## Editorial Board

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