

# Benefits Alert

January 2010

## CMS Updates Medicare-As-Secondary-Payer Guidance

The federal government always wants Medicare to be the secondary payer. To ensure that it is, beginning this year, all group health plans must file quarterly electronic reports with the Centers for Medicare and Medicaid Services (CMS). Reporting applies to insurers and third-party administrators. For self-insured and self-administered plans, administrators or fiduciaries are on the hook. Earlier this year, the CMS released a User Guide. It has now updated that guide.

### KEY USER GUIDE UPDATES

The User Guide provides technical and file formatting information for group health plans, which, in true bureaucratic jargon, the CMS refers to as required reporting entities.

Among the important clarifications made by the CMS are the following.

- Required reporting entities don't have to register with the CMS if they will have nothing to report. For example, a third-party administrator who pays claims only for certain stand-alone or carve-out group health coverage that doesn't overlap Medicare (e.g., dental coverage) may not have anything to report.

- Required reporting entities that will be reporting only health reimbursement account (HRA) data don't need to register at this time. The CMS will start collecting HRA data after October 1, 2010. HRA-only reporting entities must register with the CMS by May 1, 2010.

- Required reporting entities don't have to report group

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health coverage information that reflects a period of coverage of fewer than 30 calendar days, if the coverage has an actual termination date. Open-ended coverage periods should be reported with zeroes in the termination date field.

- An active-covered individual is an employee (or spouse or dependent) who is currently employed, who may be eligible for Medicare, and for whom Medicare would be a secondary



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## Interim Final Regs Implement Genetic Nondiscrimination Law

The Genetic Information Nondiscrimination Act (GINA) beefs up the genetic non-discrimination rules contained in the Health Insurance Portability and Accountability Act by prohibiting group health plans from requesting or requiring that employees or their family members undergo genetic tests prior to enrollment and in connection with enrollment. Plans also can't collect genetic information for underwriting purposes. Interim final regulations, which became effective for plan years beginning December 7, 2009, clarify the law. The regs impact wellness programs. GINA also prohibits employers from discriminating against employees based on genetic information, but these regs do not cover that provision.

### WHEN GENETIC INFORMATION MAY BE COLLECTED AND USED

GINA prohibits group health

plans from requesting genetic information or adjusting premiums or contributions for the plan or a group of similarly situated individuals on the basis of genetic information. However, plans may still raise premiums based on an individual's claims experience, or on an individual's manifestation of a disease or disorder. *Bottom line:* Plans can raise rates based on one employee being treated for cancer. But plans can't raise rates further based on the presumption that this employee's family members are genetically inclined to contract cancer.

Under the law, employees can't be required to provide genetic information prior to enrolling in the plan, which the regs interpret as employees' effective date of coverage. Further, the regs state that whether employees' genetic information is collected prior to enrollment is determined at the time of collection. *Genetic*

*information* generally includes genetic tests of employees or their family members, the manifestation of a disease or disorder in family members (i.e., family medical history), or any request for or receipt by the employee or family members of genetic services. It doesn't include information about an individual's gender or age.

*Genetic tests* include an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detect genotypes, mutations, or chromosomal changes. Genetic tests don't include HIV tests, complete blood counts, cholesterol tests, liver function tests, or drug or alcohol tests.

Regardless of the general prohibition on collecting genetic information, the regs allow plans to obtain and use the results of a genetic test to make a payment decision. However, plans must request only the minimum amount of information necessary to make that decision.

Genetic tests may also be used to determine a course of treatment. Finally, plans may collect genetic information for research purposes, if employees voluntarily give their written consent, plans explain that not consenting won't impact benefits received or premiums paid, and other conditions are satisfied.

### UNDERWRITING DECISIONS AND WELLNESS PLANS

The regs specify that underwriting is broader than activities related to rating and pricing group policies. The regs directly impact wellness and disease management programs by clarifying that programs

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## CMS Updates Medicare-As-Secondary... (cont.)

payer. Various age thresholds apply to these individuals, but active-covered individuals who are receiving kidney dialysis, or those who have received a kidney transplant, must be reported regardless of their age or their family member's current employment status.

- For reporting individuals who are under an age threshold,

and who are "known to be entitled to Medicare," a reporting entity knows that individuals are entitled to Medicare when that entity has a Medicare health insurance claim number on record, or is paying primary or secondary to Medicare for covered individuals who have employer-provided group coverage. ❖

## Too Sick To Work? Not For All The Cold Medicine In The World

**A**s predicted, the swine flu has reemerged. And employees who come to work sick don't do anyone any favors. But come they do. According to the results of a survey conducted by LifeCare, Inc., a scant 6% to 7% of employees said they don't work when they're sick. These figures are consistent from year to year. The survey sheds light on what's called presenteeism, which may help you to persuade sick employees to stay home.

### A POUND OF CURE

Do employees feel a misplaced sense of loyalty that's driving them to come into work when they really should be home? Some do. More than a quarter of respondents — 29% — said that they came into work because other people depended on them and they didn't want to let their co-workers down. Almost

as many — 26% — said that it was too risky to take time off. Other survey results include the following.

- 15% were too busy to stay home.
- 12% save their sick days for child care/elder care emergencies.
- 8% save their sick days for vacation days.

### COMPANY POLICIES MAY BE THE CULPRIT

No-fault attendance policies that assign points to absent employees may be counterproductive this year. It's quite simple — accumulate enough points and you're gone. You want to encourage employees to stay home when they're sick, not punish them. If there's evidence that the swine flu has hit your workplace, you may want to consider relaxing your no-fault

attendance policy. You can still pick out the slackers; they're the ones who look suspiciously tan after calling in sick on Friday and Monday.

### AN OUNCE OF PREVENTION

Employees aren't working up to par when they're working sick. *Worse:* They'll pass their germs onto others. You can send sick employees home, but it should never get to that. The best preventive measure you can take is to create an environment where employees feel comfortable taking time off.

- Cross-training several employees in the same job duties can help employees who think they're indispensable.
- Employees who aren't too sick can work from home and not be charged a sick day.
- Tweak your time-off policy to allow employees to take a few hours off to take themselves or a family member to a doctor's appointment without having to burn a whole day. ❖

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## Interim Final Regs Implement Genetic Nondiscrimination Law (cont.)

that provide rewards (e.g., changing deductibles or other cost-sharing mechanisms, or providing discounts, rebates, payments in kind, or other premium differentials) for completing health risk assessments (HRAs) that request genetic information, including asking even one question regarding family medical history, violate the prohibition against requesting genetic information prior to enrollment for underwriting purposes. This is true, the regs say, even if rewards

aren't based on the outcome of the assessment. On the other hand, programs can continue to collect genetic information if employees aren't rewarded at all.

As a result of the regs' strict approach, wellness and disease management programs that want to continue to reward employees for completing HRAs must be redesigned to not include questions on family medical history prior to enrollment. According to the regs, it's critical that HRA questions are worded

properly. Questions should explicitly direct the respondent to not include any genetic information. *What's OK:* "In answering this question, you should not include any genetic information. That is, please do not include any family medical history or any information related to genetic testing, genetic services, genetic counseling, or genetic diseases for which you may be at risk." *What's not OK:* "Is there anything else relevant to your health that you would like us to know or discuss with you?" ❖

## IRS Releases 2010 Inflation-Adjusted Benefits Figures

Last month, the IRS announced the 2010 inflation-adjusted figures that apply to 401(k) and other pension plans. Completing its annual duties, the IRS has released the 2010 inflation-adjusted figures for other popular employer-provided fringe benefits, including adoption assistance and long-term care premiums.

**Employer-provided adoption assistance.** For 2010, employers that have adoption assistance programs can exclude \$12,170 from employees' incomes. This amount is phased out for high earners. In 2010, the excludable amount begins to be phased out for employees who have modified adjusted gross incomes ex-

ceeding \$182,520. The benefit is completely phased out for employees who have modified adjusted gross incomes of \$222,520 or more.

**Transportation fringes.** For 2010, the monthly exclusion for transportation fringe benefits — qualified employer-provided parking, transit passes, and rides in commuter vehicles — remains \$230. *Reminder:* These fringes may be offered on a pre-tax basis, but can't be part of a cafeteria plan. Bicycle fringes are \$20 a month, and can't be funded on a pre-tax basis.

**Long-term care premiums.** For tax and benefits purposes, employer-provided long-term care insurance is treated like

health benefits, with one big exception. While employers' payment of employees' health premiums is completely tax-free to employees, the amount employers can pay tax-free on long-term care insurance contracts is limited, based on employees' ages. *Reminder:* These benefits can't be part of a cafeteria plan.

- For employees who are 40 years old or younger, employers can pay up to \$330.
- For employees who are between 40 and 50 years old, employers can pay up to \$620.
- For employees who are between 50 and 60 years old, employers can pay up to \$1,230.
- For employees who are between 60 and 70 years old, employers can pay up to \$3,290.
- For employees who are older than 70, employers can pay up to \$4,110. ❖

### Ask The Experts

*Q. An employee who recently terminated informed us that she wanted to roll over her 401(k) assets into a traditional IRA, so we took all the necessary steps and cashed her out. She has now informed us that she changed her mind and wants to roll over her 401(k) assets into a Roth IRA. How do we handle this?*

**A.** This employee may be able to convert a traditional IRA into a Roth IRA herself, if she qualifies — i.e., for 2009, her modified adjusted gross income is \$100,000 or less and, if she's married, she files jointly with her husband. You will need to provide this employee with the proper Form 1099-R by February 1, 2010. To be correct, the form must show that income taxes are due, since previously untaxed amounts will become taxable upon the conversion. Note that beginning this year, the income and filing restrictions on Roth IRAs disappear completely and forever.