



SPEED AND ACCURACY

COMMON CLAIMS

MEDICARE SECONDARY PAYER MANDATORY REPORTING

Johns Eastern is prepared for Medicare Secondary Payer Reporting compliance. Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) (P.L. 110-173), adds new mandatory reporting requirements for liability insurance (including self-insurance), no-fault insurance, and workers' compensation. See 42 U.S.C. 1395 y (b) (8). The information below includes a section addressing the Centers for Medicare & Medicaid Services' (CMS) implementation plans, as well as a brief overview of the provisions of the law.

In December of 2007, President Bush signed into law the Medicare, Medicaid and SCHIP Extension Act of 2007 ("MMSEA"). Section 111 of the Act, an amendment to the Medicare statute known collectively as the Medicare Secondary Payer Act ("MSP") The effect of the amendment will impact every settlement that involves an insurance carrier or self insurer; and Medicare-eligible claimant/ plaintiff in the nation.

Specifically referred to as the "Mandatory Insurer Reporting" requirements ("MIR") and designed with the ultimate underlying goal of improving overall enforcement under the MSP, Section 111 broadly regulates insurance carriers and self insured plans to facilitate Medicare's management of those instances in which Medicare should not be a primary payer. Section 111 is intended to prolong the viability of the Medicare program, by aggressively pursuing those instances in which Medicare should not be a primary payer.

By July 1, 2009, all Responsible Reporting Entities ("RRE"), "liability insurance and self-insurance, no-fault insurance, and workers' compensation laws and plans," will be required to begin active reporting to CMS. Under Section 111, any time a claim is filed "the plan" will need to determine whether the claimant is eligible for Medicare. When the plan encounters a claimant who is so entitled, the plan must "report the identity of such claimant and provide such other information as the Secretary may require." Generally the name, address, phone number, date of birth and tax identification number of the claimant, and except for date of birth any representative of the claimant or person who receives proceeds from the settlement of the claim.

Reporting will be ongoing, on a quarterly basis, for no-fault insurance and non-contested workers' compensation claims, and on a "one-time" basis for all contested cases in which there is "a single settlement, judgment, award or other payment." Failure to report carries a \$1,000.00 per day, per beneficiary civil penalty.

IT IS NOT NECESSARY FOR JOHNS EASTERN CLIENTS TO REGISTER AT THIS TIME. JOHNS EASTERN WILL BE IN CONTACT WITHIN THE NEXT TWO WEEKS WITH REGISTRATION INSTRUCTIONS.

Contributing Writer:
James Boelter
Liability Quality Assurance Manager
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MEDICARE SECONDARY PAYER

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IMPLEMENTATION TIME LINE

Liability Insurance (including Self-Insurance), No-Fault Insurance, and Workers' Compensation:

01/01-06/30/09	Recommended systems development period.
05/01-06/30/09	Electronic registration via the COBSW for all liability/no-fault/workers' compensation RREs.
07/01-09/30/09	Testing period for all liability/no-fault/workers' compensation RREs.
10/01-12/31/09	All liability/no-fault/workers' compensation RREs submit their first Section 111 production files based upon a pre-determined schedule with the COBC.
01/01/10	All liability/no-fault/workers' compensation RREs will be submitting Section 111 production files by this date.

EMMA MURRAY V MARINER HEALTH AND ACE USA

The long awaited decision on the Emma Murray v. Mariner Health and ACE USA case was rendered by the Florida Supreme Court on October 23rd, 2008. In this case the statutory guideline fee for benefits obtained by the claimant's attorney in a claim denied under a 120 day investigation was \$648.84 for obtaining benefits totaling \$3,244.21 paid to the claimant.

The Supreme Court decision was based on consideration of subsections (1) a general provision on attorney's fees, and subsection (3) a specific provision to attorney's fees of FL Statute 440.34. The court's decision was based on an old case (Lee Engineering) where it is noted that when two statutory provisions conflict, the decision favors the specific provision over the general provision. Therefore, the 2003 law changes have no effect on limitation of attorney's fees.

The result of the decision on this profile case was the Supreme Court remanded the JCC for entry of an attorney fee award to the claimant's attorney in the amount of \$16,000.00 based on an hourly rate. This is more than a significant amount when considering exposure for attorney's fees in strategic claims handling. Decisions made in litigation management between employers, defense attorneys and adjusters should be carefully considered with the court's recent decision now setting forth this case for claimant's attorneys to build up fees based on hourly rates.

Contributing Writer
Judy Dubreuil, CWCL
Workers' Compensation Claims Manager

THE ECONOMY & FRAUD

A Cost Effective Alternative...Unmanned Remote Surveillance

In today's economic environment, dollars, budgets and jobs are being stretched to the limit. A clear by-product of this recession is a marked increase in insurance fraud.

Regardless of the external environmental factors, statutorily we still must investigate all suspicious claims...wherein, we shall report our findings to the Florida Division of Insurance Fraud (DIF).

However, we may find that budgetary restrictions to fully investigate questionable claims are real and may negatively impact our ability to fully investigate suspicious claims. Cost effective investigative options are needed now more than ever to fill this gap and provide sustained, uninterrupted and effective fraud abatement programs during these times of economic uncertainties.

Unmanned Remote Surveillance is a cost-savings surveillance option that is nearly 30% cheaper than traditional surveillance. Unmanned Remote Surveillance technology is the culmination of current technology developed out of the necessity to better investigate complex insurance claims at a reduced net cost.

Remote Surveillance utilizes non-descript unmanned vehicles that are deployed in the proximity of the desired surveillance location. These specially equipped and outfitted vehicles are the host platform to covertly support a variety of proprietary electronics, to include concealed video cameras.

Proprietary technology allows for these unmanned vehicles to record more than 200 hours of continuous, sustained, uninterrupted video. In addition, dates, times and durations can be pre-programmed to specifically meet any investigative requirement. All recorded video is digitally watermarked surpassing best evidence practices for authentication.

Independent power sources have been harnessed, remaining completely concealed within the remote surveillance vehicle. This allows for long-term, autonomous functionality of all the onboard equipment.

At nearly 30% cheaper than traditional surveillance. Unmanned Remote Surveillance is a proven investigative tool. The claims professional is now empowered with a cost-effective investigative option that has been successfully used in both criminal and civil venues.

Unmanned Remote Surveillance has been successfully used in the following claim scenarios:

- Attendant Care Verification
- Permanent Total Disability Claims
- Pattern Development & Inactive Claimants
- Clinic Surveillance
- Rural Surveillance Areas
- Long-term Surveillance Operations

Thorough claims investigation is the law. Utilizing cost effective methods to support and enhance fraud management is a smart and fundamental business practice... needed more than ever today.

Contributing Writer: Steve Cassell, SIU Director JECO

"RULES FOR SELF-INSURERS UNDER THE WORKERS' COMPENSATION ACT" WORKSHOP SUMMARY

By: Laura K. Lowe, Johns Eastern Company, Inc.
February 2009

On February 16, 2009 the Florida Department of Financial Services held a workshop on the proposed Rule changes for Chapter 69L-5. A copy of the proposed Rules can be found at <http://www.myfloridacfo.com/WC/pdf/notice69L-5.pdf>.

Robin Ippolito, Bureau Chief, Monitoring and Audit, Florida Department of Financial Services addressed the Rule changes. The workshop was well-attended and included the Florida Self-Insurers Guaranty Association, the Department of Financial Services Bureau of Monitoring and Audit, Self-Insured Employers, Third Party Administrators, Excess Carriers, Attorneys, Consultants, Agents, as well as organizations such as the Florida Association of Self-Insurance (FASI).

Specific Rule changes proposed as well as the recommendations for consideration by those in attendance are listed below:

PROPOSED RULE CHANGE

REQUEST FOR CONSIDERATION BY ATTENDEES

Section 69L-5.204 Payroll records must be maintained for 5 years. If records are not maintained to reflect accurate payroll figures and class codes, payroll shall be assigned to the class code with the highest rate.

The audit penalty measurement is requested to be a percentage of payroll rather than a dollar amount.

Section 69L-5.204(3) Penalties for underpayment of assessments are proposed and if the underpayment is in excess of \$1,000, the cost of the audit would be payable by the self-insured.

In the event the audit was billed to the self-insurer, it was suggested the cost of a subcontracted auditor be equal cost to an auditor of the Department.

Section 69L-5.205 Electronic submission is required for the Unit Statistical Reports (SI-17).

Paper filing for those self-insurers who cannot report electronically. Johns Eastern Company, Inc. is currently reporting Unit Statistical Reports in electronic form for our clients.

Section 69L-5.207 The due date for the filing of the Outstanding Liabilities Report (SI-20) is proposed to change to 120 days after the end of the fiscal period. In addition, loss runs will be required to be filed with the report and the forms must be signed by an Authorized Representative of the self-insurer or Qualified Servicing Entity.

This report is applicable only to non-governmental (private) self-insurers.

Section 69L-5.209 Minimum net worth for non-governmental (private) self-insurers will change from \$1 million to \$10 million dollars. Financial statements filed within 120 days after the close of the fiscal year will determine the net worth.

The Guaranty Association commented that there are 6 current self-insurers whose minimum net worth is less than \$10 million. Of those six, three members would comply with the reporting requirements under alternative provisions and three will not. Consideration would be made to post collateral through the form of a letter of credit or bond for those members to comply. Concern with those in attendance for future self-insured applicants, not meeting the minimum net worth of \$10 million was shared with the Department.

Section 69L-5.210 Non-governmental (private) entities "that do not have Investment Grade Ratings shall be required to submit Actuarial Reports within 120 days after the end of the fiscal year or any other date requested by the Department or Guaranty Association (FSIGA, February 2009)."

Self-insurers without actuarial reports voiced concern and reconsideration to this Rule due to the cost and time involved in preparing actuarial reports.

Section 69L-5.216 (2) The Certification of Servicing (SI-19) form will be filed within 30 days of a change of Servicing Entity and at least every three years thereafter.

PROPOSED RULE CHANGE

Section 69L-5.217 Late filings for reports are currently \$100 per form. The proposed rules will allow penalties starting at \$100 for forms 1 day but less than 14 days late and can increase up to \$5,000 for filings 31 to 60 days late and \$200 per day after 60 days. The fines can be assessed by occurrence, form, report or document. A fine of \$100 or 5% of the assessments can be levied if assessment payments are late.

Section 69L-5.209 & 5.218 Security Deposit changes and Adaption of Credit Ratings are significant rule changes.

This section will require non-governmental (private) entities to secure security deposits based on an Investment Grade Rating.

Those that have an Investment Grade Rating will have a minimum security deposit of \$100,000. Private Self-Insurers that do not have an Investment Grade Rating will have a security deposit equal to the greater of the actuarially determined outstanding loss reserves discounted to present value, using a 4% discount rate or the actuarially determined outstanding loss reserves forecasted to a date on year in the future, discounted to such forecasted date using a 4% discount rate as calculated in its Actuarial Report.

If the current or former self-insurer does not have a currently published credit rating, the FSI GA or the Department shall determine an equivalent rating by incorporating data from the financial statements into credit risk estimation models and the amount of the security deposit shall be determined using the equivalent rating as the credit rating.

The increase (if applicable) will be made within 12 months of the effective date of the Rule. The security deposit is maintained until the former self-insurer can demonstrate that there is no remaining value to the claims and the statute of limitations has run. (1)

Section 69L-5.219 Excess Insurance will be required to carry Statutory Limits and the minimum self-insured retention (SIR) will be increased to \$500,000. A larger self-insured retention (SIR) can be approved by the Department, based on the self-insurers net worth.

Section 69L-5.221 The Safety Credit, which is not currently available, will allow up to a 2% premium credit to self-insured's assessments. A new NCCI form will need to be completed and filed 60 days prior to the anniversary rating date to receive credit.

Section 69L-5.222 Concealing and/or understating data used to compute an experience modification will be good cause for revocation of self-insurance privileges. Payroll Reports (SI-5), Unit Statistical Reports (SI-17) and Outstanding Liability Reports (SI-20) are those used to compute experience modification ratings.

REQUEST FOR CONSIDERATION BY ATTENDEES

An aggregate dollar amount or "cap" was recommended for assessment of fines.

Concerns regarding hardship during these economic times were expressed by not only the individual self-insurers in attendance, but by consultants, agents, third-party administrators, and excess carriers. "It was noted that, because few states rely on rating organizations, requiring a large security deposit would add an inefficient expense for self-insurers, and that an increase in the required deposit would be problematic in the tough economic climate, since it would require an infusion of capital, as well as the ability to remove that capital from the market. DFS Staff reminded that the requirement is intended to ensure that insurers can make timely payment of claims (Fidei, R. - Florida Division of Workers' Compensation Rule Development Workshop Report: Rules for Self-Insurers, February 2009)."

Statutory limits may be difficult to obtain depending on risk type and location of self-insurer. Many excess carriers have not offered statutory limits since 9/11/01 and if required for compliance with this Rule, increases in premium will be passed onto the self-insured.

Positive comments were reflected throughout the attendees.

A public hearing will be scheduled once the Department has considered all requests for consideration. Stay tuned for more information via Johns Eastern Company's Newsletters and E-flashes. Please contact Laura Lowe for any questions at llowe@johnseastern.com.

Sources:

- (1) FSI GA Workshop handouts, February 2009.
- (2) Proposed Rule, Chapter 69L-5 <http://www.myfloridacfo.com/WC/pdf/notice69L5.pdf>.
- (3) Fidei, R., "Florida Division of Workers' Compensation Rule Development Workshop Report: Rules for Self-Insurers," February 2009.

BE ECO-FRIENDLY! If you prefer to receive our quarterly newsletter via email instead of a hard copy, please send an email to Audrey Roman aroman@johnseastern.com

UPCOMING CONFERENCES

FERMA Annual Conference
June 16-19, 2009
Lido Beach Resort, FL
<http://www.fermasite.org/>

FASI 2009 Annual Educational Conference & Trade Show
July 19-22, 2009
Ritz Carlton - Naples, FL
<http://www.fasi-fl.org/conferences.asp>

RIMS Regional Conference
July 28-August 1, 2009
Ritz Carlton - Naples, FL
<http://www.rims.org>

Annual Workers' Compensation Educational Conference & Safety and Health Conference
August 16-19, 2009
World Center Marriott - Orlando, FL
<http://www.fwciweb.org/Conference.html>

2009 State PRIMA Conference
October 25-28, 2009
Naples Grande Resort - Naples, FL
<http://www.southfloridaprima.com>

OSHA Report Information

Johns Eastern can generate the forms needed for recording injuries and illnesses as required by the U.S. Department of Labor, Occupational Safety and Health Administration. These forms are completed using information collected for the managing of employees' workers' compensation claims AND information entered and maintained by the employer in Johns Eastern's Claims Management System.

Johns Eastern can provide to the employer, OSHA reports in the form of an Excel Spreadsheet package containing multiple worksheets. These worksheets are fully completed and, when printed out, are ready to be retained in the employer's file or posted as required by OSHA. The Spreadsheet package contains the OSHA 300 Log, the OSHA 300a Summary, and the OSHA 301. Each of the forms is designed to be sent to a laser or ink-jet printer and printed on 8.5" x 14" paper in landscape orientation.

Forms are fully completed to the extent that the data exists in Johns Eastern's System; also, summary information such as "Average number of employees" must be manually entered into the form by the employer at year's end. Some of the information required in keeping the OSHA logs includes elements not ordinarily needed to manage a workers' compensation claim. Items like "On Job Transfer" days are not naturally tracked since those days are not typically compensated by Johns Eastern. That is one of the elements that must be maintained by the employer in the Johns Eastern Claims Management System.

Who's WHO at Johns Eastern?



JAVIER MELENDEZ
TPA LIABILITY MANAGER
SARASOTA, FL

Mr. Melendez began his employment with Johns Eastern in 2006 as a Senior Adjuster. He was promoted to TPA Liability Supervisor and most recently TPA Liability Manager.

Mr. Melendez has worked as an adjuster for over 10 years, handling a wide variety of claims. His background includes handling Commercial General Liability, Products Liability, Automobile Liability, Automobile Physical Damage, Property, Garage Liability, Garage Operations, Fidelity, Errors & Omissions, Directors & Officers, Employment Practices Liability, Bonds and Bankers Liability claims. Mr. Melendez is also bilingual.

Mr. Melendez currently oversees two Supervisors and thirteen adjusters handling the Self-Insured Program for governmental and commercial entities including counties, municipalities, churches, public schools and a hospital.



KIM MCKENNEY
TPA LIABILITY SUPERVISOR
SARASOTA, FL

Ms. McKenney began her employment with Johns Eastern in 2007 as an adjuster. Recently she was promoted to TPA Liability Supervisor.

Ms. McKenney has worked as an adjuster since 2006 and has handled a variety of claims, including PIP, Commercial General Liability, Auto Physical and Auto Liability for litigated and non-litigated claims. She also possesses a Bachelor in Science degree in Risk Management and Claims.

Ms. McKenney currently oversees four adjusters handling the Self-Insured Program for governmental and commercial entities.

IMPORTANT: PLEASE NOTE...

Johns Eastern Company has new mailing addresses & PO Boxes:

HOME OFFICE / INFORMATION SERVICES / SPECIAL ACCOUNT SERVICES

PO Box 110259
Lakewood Ranch, FL 34211-0004

TPA WORKERS' COMPENSATION

PO Box 110279
Lakewood Ranch, FL 34211-0004

TPA LIABILITY

PO Box 110239
Lakewood Ranch, FL 34211-0004

Our main telephone number remains the same
941-907-3100



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CEU SEMINARS

- 4/28/09 - "Attendant Care," "Ethics" and "Work Product and Attorney Privilege." This session will provide two hours of Law and Policy credits and one hour of Ethics credit.
- 5/5/09 - "Is It Comp or Is It Not"
- 5/21 - EMG/NCS Landscape
- 6/23 - Fibromyalgia & Reflex Sympathetic Dystrophy (RSD)

Johns Eastern Company CELEBRATES EARTH DAY

In celebration of its 39th anniversary this year, Earth Day is being commemorated by the employees at Johns Eastern Company, who planted two trees on the company grounds. With the money that was raised, the employees will enjoy the new plantings which will provide additional building shade and a scenic view for their offices on a daily basis.

Johns Eastern is aware of the issues that threaten our earth's environment and is already operating in a paperless environment. Our paperless system was designed to scan and index new file material by document category, which facilitates the adjusting, investigation, and management of workers' compensation claims by allowing greater access to the claims information.

