

MARKET BULLETIN

REF: Y4328

| | |
|----------------------|--|
| Title | US Medicare Secondary Payer Legislation |
| Purpose | To inform the Market as to the actions it should take in respect of reporting and claims management issues raised by the Medicare legislation; To update the Market on discussions with CMS. |
| Type | Action Required |
| From | Andrew Gurney, Senior Manager, International Regulatory Affairs |
| Date | 6 th November 2009 |
| Deadline | Ongoing responsibility |
| Related links | Lloyd's market bulletin Y4277, 12 May 2009 Lloyd's market bulletin Y4279, 13 May 2009 Lloyd's market bulletin Y4306, 10 August 2009 CMS User Guide, version 2.0 |

Purpose

To update Managing Agents and Brokers on the status of the registration process for non-US insurers and Lloyd's engagement with the Federal agency responsible for the administration of Medicare, the Centers for Medicare and Medicaid Services (CMS).

To remind Managing Agents and Brokers of the actions they should be taking on the gathering of data on claims that are potentially impacted by the Medicare Secondary Payer legislation. It is highly important to be aware of these requirements as the maximum penalty for non-reporting is \$1,000 per day per claim.

Registration Process

Non-US insurers encountered a number of hurdles in registering according to the guidelines laid down by CMS. Subsequently, CMS confirmed that non-US insurers should not start the registration process. This remains the case pending the issuance of further guidance by CMS, which is expected during November. It is understood that this guidance has been drafted by CMS officials with Lloyd's in mind, and CMS believes it will address some of the issues raised by Lloyd's.

Managing Agents **should not register** with CMS for the time being. Lloyd's will review the guidance in the context of the concerns raised with CMS and the appropriateness of the

reporting structure to Lloyd's. Lloyd's will issue further information once that review is concluded.

CMS Engagement

Lloyd's is in a continuing dialogue with CMS on issues that require resolution. Many of these are issues that exist in common with other non-US insurers. Some examples are the questions of how to register, the use of Tax ID Numbers by non-US entities and reporting in subscription markets. In addition, there are a number of questions of specific relevance to Lloyd's around how the Medicare Secondary Payer requirements will work. These include questions on how the process fits with Lloyd's unique structure.

Collection of data for reporting purposes

All Managing Agents writing risks that may give rise to in scope claims (per Market Bulletin Y4277 dated 12 May 2009) are reminded to advise their Third Party Administrators (TPAs) and Coverholders to await guidance from the Managing Agent regarding the registration and reporting processes for Lloyd's market entities.

Managing Agents are reminded that they need to ensure that the relevant claims data should be collected and be available for all:

- "Ongoing Reporting of Medicals" (ORM) claims payments after 1st July 2009, and
- "Total Payment Obligation Claimant" (TPOC) claims payments after 1st January 2010

This is consistent with the advice given in Market Bulletin Y4306 dated 17 August 2009.

It is not yet clear what timelines will apply to the actual reporting of information by non-US insurers given the delays in registration. **However, regardless of whether there is a deferral of the reporting timetable, Managing Agents are strongly advised that the obligation to capture data still exists from the dates specified above for ORM or TPOC claims payments.**

XCS 'MEDI' Cat Code

XCS has established and implemented with immediate effect a new Cat Code, MEDI, which will apply to all claims where the claimant is assessed to be Medicare eligible. In order to make this code effective, sufficient information must be collected during the claims investigation process to identify if the claimant is likely to be Medicare eligible. Any claim involving a claimant that is assessed to be Medicare eligible will be entered separately on XCS Class. This includes business handled on a bordereaux basis where XCS will also record any Medicare eligible claimants individually.

Communication with TPAs and Coverholders

When contacting TPAs and Coverholders, Managing Agents should also outline the actions they are required to undertake in respect of claims investigation/handling of US bodily injury claims to establish a claimant's Medicare status. For guidance on investigating and identifying Medicare claimants, please refer to the report by Wilson Elser Moskowitz Edelman & Dicker LLP, which also outlined market guidance in respect of Medicare s.111 and was circulated to all Managing Agents on 24th September 2009.

TPAs and Coverholders should also establish mechanisms for the identification of Medicare claimants on bordereaux, and the gathering of the necessary information for the CMS reporting process. Claims agreement parties need to ensure that claims investigations on all current open and all new US bodily injury liability claims are structured in such a way to identify the Medicare status of claimants and the necessary information for reporting.

The concurring view of the LMA, LMACC and Binding Authority Claims Group (BACG) is that claims settlement authority for Medicare beneficiary claims should be withdrawn to London at the present time; however, this standpoint will be kept under review. Managing Agents and Brokers will need to identify and adhere to relevant Claims Agreement parties when authority is withdrawn to London. Additionally, Managing Agents will need to ensure that any necessary endorsements and contractual amendments comprehensively address any changes in settlement authority. It will also be important for Managing Agents to ensure they are compliant with State Claims Settlements Practice laws when handling these claims.

Conclusion

Lloyd's will contact Managing Agents and other interested parties when further guidance is received from CMS. Lloyd's will verify that this covers the questions asked of CMS and will interpret this guidance for its applicability to the Lloyd's market.

Further Contacts

For questions regarding RRE registration and monthly reporting, please contact:

Steve Yates
Manager, International Regulatory Affairs
+44 20 7327 5351
stephen.yates@lloyds.com

For questions regarding claims management and the Lloyd's Medicare Claims Working Group, please contact:

Phil Godwin
Senior Claims Manager, Lloyd's Claims
+44 20 7327 5841
philip.godwin@lloyds.com

General information:

If you have any queries about this market bulletin, please contact:

Lloyd's International Trading Advice:

Tel: 020 7327 6677

Email: lita@lloyds.com

Appendix A

Information Requirements for Initial “Query” reporting

The monthly Query reporting process (often referred to as Stage 1 reporting) requires the following information regarding the plaintiff:

- Social security number or Health Insurance Claim Number: The Health Insurance Claim Number is Medicare’s unique identifier associated with the individual concerned.
- Surname
- First initial
- Date of Birth
- Gender

Where the plaintiff is identified as a Medicare beneficiary, the Claims reporting process is required. The data set required by this is more extensive and may be found at Appendix A of the CMS User Guide (p108 in Version 2.0, link below).

<http://www.cms.hhs.gov/MandatoryInsRep/Downloads/NGHPUserGuide2ndRev082009.pdf>