Frequently Asked Questions

Q Does Kaiser Permanente intend to comply with the federal MSP mandatory reporting requirement?

A Kaiser Permanente intends to comply with the mandatory MSP reporting law beginning in 2009, in accord with the timeline established by CMS. Our ability to comply with reporting required for your group will depend on your cooperation in providing Kaiser Permanente with the necessary data elements for each member (subscriber and dependent) for whom reporting is required. We will communicate with you and request these data elements from you soon.

Q Will the report Kaiser Permanente provides to CMS fulfill all of my organization’s obligations related to the mandatory MSP reporting requirement of Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA)?

A Kaiser Permanente will provide to CMS the required information about the commercial members covered under the group health plan that we maintain for your group. You may have other reporting requirements under the new law, so we strongly encourage you to seek legal advice from your own attorney or HR consultant. For example, a second part of the law, effective July 1, 2009, requires reporting to CMS of awards, settlements, or judgments by certain liability insurers and workers’ compensation insurers to Medicare beneficiaries. That is beyond the scope of Kaiser Permanente’s purview.

Mandatory MSP Reporting overview

The Medicare Secondary Payer Mandatory Insurer Reporting (MSP-MIR) requirement of Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) includes a Group Health Plan (GHP) requirement that obliges health plans to report certain information to the Centers for Medicare & Medicaid Services (CMS), the federal agency that regulates the Medicare program, beginning in 2009.

According to the latest CMS reporting timeline, health plans with a Voluntary Data Sharing Agreement (VDSA) with CMS must submit their first MSP-MIR report in January 2009. Health plans without a VDSA, such as Kaiser Permanente, must report the following information beginning July 2009:

For groups that offer commercial coverage

• Group legal name
• Group’s Coordination of Benefits (COB) address
• Employer Identification Number (EIN)
• Number of employees (0–19, 20–99, or 100+)

At membership level

• Social Security Numbers (SSNs) of all active employees and dependents of active employees who are age 55 and older
• SSNs of all group members of any age who are receiving kidney dialysis or have had a kidney transplant
• SSNs of all active employees and dependents of active employees who are under 55 and who (we know) are entitled to Medicare

NOTE: Reporting requirements are subject to change by CMS.
Q. What is “MSP”?
A. “MSP” stands for “Medicare as Secondary Payer.” The Medicare law describes situations in which another payer—typically an insurance company—must pay first (or “primary”) for services provided to a Medicare beneficiary before Medicare pays “secondary.” The purpose of the law is to save Medicare money.

For example:

• When an employee who is over 65 and continues to work is actively employed by an employer with more than 20 employees, the employer’s group health plan must pay “primary.”

• When a beneficiary with end-stage renal disease (ESRD) is covered by an employer’s group health plan, that plan must pay “primary” for the first 30 months the beneficiary is entitled to Medicare.

• When a beneficiary is injured in an accident (such as an automobile accident, or a slip and fall at the grocery store, or as a result of malpractice), Medicare (as “secondary” payer) is entitled to be repaid for any Medicare-covered services the beneficiary has received for his/her injuries from the settlement or judgment that an insurance company (the “primary” payer) has paid the beneficiary.

When Medicare is “secondary” payer, it will only pay after the member’s “primary” payment has been exhausted or does not exist. These new mandatory MSP reporting requirements are all intended to identify Medicare beneficiaries who have “primary” payers such as employer group health plans and liability insurance coverage.

Q. What is MSP data reporting?
A. Under the Medicare, Medicaid, and SCHIP Extension Act of 2007, group health plans are required to collect and transmit information from employer/labor and trust fund groups with respect to certain members (subscribers and dependents) enrolled in commercial coverage that the employer/labor and trust fund sponsors. The new mandatory MSP reports, which health plans are required to submit, must contain group member (subscriber and dependent) SSNs and Employer Identification Numbers (EINs).

Q. Who is required to submit the data?
A. Health plans, third-party administrators (TPAs), self-insured, and self-administered plans are required to collect the specific data elements from the employer/labor and trust fund groups, compile the data elements into the required reporting format, and submit the report to CMS.

Q. When will the new reporting requirements take effect?
A. According to the law, the Group Health Plan reporting requirement is effective January 2009. According to the recently released CMS timeline, health plans that are not currently participating in the Voluntary Data Sharing Agreement (VDSA), which includes Kaiser Permanente, are required to submit their initial report to CMS in July 2009. Subsequent reports are required each quarter thereafter.

Q. Are there any groups that are exempt from this CMS reporting requirement?
A. Groups with fewer than 20 employees are exempt from reporting.

Q. Doesn’t Kaiser Permanente already collect the data CMS is requiring?
A. We do collect some of the required data. However, we have identified some gaps in our collection process. These include:

• EINs:
  ○ We haven’t consistently collected or updated this information in the past.
**Legal Group Name:**
- Our Group Agreements and record-keeping do not consistently reflect the legal name of the group customer.

**Group addresses must be specific to the group contact that would handle Coordination of Benefits.**

**SSNs:**
- We have a high percentage of subscriber SSNs, but a much lower percentage of dependent SSNs.

**Subscriber SSN and group EIN must match how the group reports this data to the IRS.**
- Our current records do not consistently include IRS-compatible data.

**Q. What is Kaiser Permanente’s responsibility?**
**A.** Kaiser Permanente is responsible for gathering the data elements, compiling them in the required format, and transmitting the report electronically to CMS according to the timeline and frequency that CMS has established. Kaiser Permanente is also responsible for updating its records with any applicable corrections from CMS.

**Q. What happens if Kaiser Permanente does not provide the required information to CMS?**
**A.** Kaiser Permanente could face fines and/or sanctions from CMS.

**Q. When will we begin gathering the data?**
**A.** We are analyzing which of the required data elements we currently have in our internal systems and developing the mechanism for collecting this data. When that process is completed, we will begin collecting data from our customers. We expect this to begin in February 2009.

**Q. Will this new reporting requirement be reflected in the Group Agreement?**
**A.** The Group Agreement in each region is being amended to include the following language for 2009:

**Social Security and Tax Identification Numbers**
Within 60 days after Health Plan sends Group a written request, Group will send Health Plan a list of all members covered under this Group Agreement, along with the following:
- The Member's SSN.
- The tax identification number of the employer of the Subscriber in the Member's [Family Unit].

**Q. When will we be expected to provide the required information to Kaiser Permanente?**
**A.** Kaiser Permanente will need this information in the first quarter of 2009 in order to meet the CMS reporting deadline.

**Q. How will CMS use the data?**
**A.** CMS will compare data supplied by group health plans with its master file of Medicare beneficiaries to determine whether any commercial group member is entitled to Medicare, and if so, whether Medicare is primary or secondary for that member. CMS wants to ensure that if Medicare is billed for services provided to that member, Medicare only pays when it is primary, or, if secondary, only when the member's primary employer/labor and trust fund group coverage has been exhausted or does not exist.

**Q. How does collecting and transmitting this data benefit the group?**
**A.** Kaiser Permanente's collection and transmission of this data to CMS will ensure that CMS has accurate information about each group's members, and can pay those members' Medicare claims correctly. If CMS pays for services for a group member because it
believes that Medicare is primary, and thereafter CMS ascertains that Medicare was actually secondary, CMS can seek recovery of its payments from the group. Accurate information from the group transmitted accurately and in a timely manner by Kaiser Permanente to CMS will prevent this from happening.

Q. How does collecting and transmitting this data benefit the member?
A. It will ensure that CMS has accurate information about them and can correctly pay their claims.

Q. How frequently does the information need to be reported to CMS?
A. Beginning July 2009, group health plans will be required to submit quarterly reports to CMS.

Q. Don’t groups already report this data directly to CMS through DataMatch or a Voluntary Data Sharing Agreement (VDSA)?
A. Some groups currently do report similar information to CMS through a VDSA. However, this is not required by law. Beginning in 2009, the new law mandates that group health plans report the data directly to CMS. VDSAs will be replaced by the mandatory MSP reporting requirement.

Q. What is a VDSA?
A. A VDSA authorizes CMS and an employer, or insurer or agent on behalf of an employer, to electronically exchange health insurance benefit entitlement information. A VDSA partner agrees to quarterly submit group health plan (GHP) entitlement information about employees and dependents to CMS’s Coordination of Benefits (COB) Contractor. In exchange, CMS agrees to provide the VDSA partner with Medicare entitlement information for those individuals in a GHP who can be identified as Medicare beneficiaries. In 2009, VDSAs will be replaced by the mandatory MSP-MIR requirement.

Q. Will Kaiser Permanente charge any fee to the group for the collection or reporting of the data?
A. No.

Q. Will reporting this data to CMS affect group members’ benefits through that commercial group coverage?
A. No.

Q. Where can I obtain official CMS regulations and memos specific to MSP-MIR?
A. You can download copies of the mandatory MSP reporting guidance documents from cms.hhs.gov/MandatoryInsRep/. The list of documents posted on this site is constantly changing, so please check the site frequently for updates.

Q. How will member information, especially SSNs, be protected when reported to CMS?
A. Kaiser Permanente complies with the strict federal and state regulations concerning gathering, storing, and transmitting personal health information of Kaiser Permanente members. We have internal safeguards to ensure that personal health information is stored in a secure environment and, if transferred to another entity such as CMS, it is done through highly secure means.

Q. Don’t recently passed state laws prohibit the use and collection of SSNs?
A. There are state laws that restrict collection of SSNs and how they can be used. However, in this case, they do not apply. Provisions of the federal Medicare as Secondary Payer (MSP) or Medicare Modernization Act (MMA) regulations or the “permitted use” provisions of the HIPAA privacy rules allow the collection and use of SSNs to help providers and insurers manage their operations.