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LEGAL UPDATE

June 19, 2009

To: Superintendents/Presidents, Member Community College Districts

From: Susanne Reed, ^{SKR} Of Counsel

Subject: Medicare Secondary Payer Issues
Memo No. 09-2009 (CC)

The purpose of this memo is to advise clients regarding what actions should be taken upon receipt of a Medicare Secondary Payer claim.

Background: As you are all aware, the current economic situation has everyone, including the Federal Government, looking for possible funding sources. This has led to an increased use of Medicare Secondary Payer claims against employers, including public entities. While there are other instances when Medicare will file a secondary payer claim against an employer, such claims generally occur when an employee is covered by Medicare, but still an active employee who is also covered by the employer's health plan. In such cases the employer's health plan is primary and Medicare is the secondary payer.

Although hospitals and medical providers are required by Medicare to determine whether a patient has primary coverage other than Medicare, providers do mistakenly bill Medicare and Medicare will, in turn, mistakenly pay the bill. Medicare then has three years from the date of the medical service to discover and notify the employer, the health plan provider or the third party administrator (TPA) that a mistake was made and to demand repayment. Once it has made that claim, it has another six years to collect the alleged debt (during which time it is assessing 11.7% interest on the original amount). While Medicare has the option to collect against any of three entities—the employer, the health plan or the TPA—its policy is to make its claim and collect from the employer. Medicare is not required to take any action other than the preliminary notice (which is valid even if sent to the wrong employer), although it generally does use some form of collection agency to request voluntary payment. If the employer does not make the voluntary payment, Medicare has the option to offset the Medicare debt, including interest and penalties, against any Federal funds that would otherwise be received by the employer. Since school and community college districts receive Federal funds, they are particularly vulnerable.

Protecting Against Secondary Payer Claims:

An employer does not have the ability to keep health providers and Medicare from making mistakes. However, there are things that you can do.

1. *Send the claim to the health plan provider.* The most important action you can take is to act promptly should you receive a Medicare Secondary Payer claim and forward it to the health plan provider with a request that the provider investigate and resolve/pay the claim. Most health plan providers have a department which is dedicated to dealing with Medicare Secondary Payer claims. Make sure that Medicare receives copies of any letters sent to the health plan.
2. *Follow-up.* Be aware that you, as the employer, are responsible to resolve, or in the worst-case-scenario, pay, Secondary Payer claims. Medicare will continue to communicate with the employer, and if the matter is not resolved within sixty (60) days of its initial notice, will begin assessing interest at 11.7%. It is important to continue to communicate with the health plan and with Medicare until the claim is resolved. Be sure to send a final letter to Medicare confirming that the claim has been resolved.
3. *Keep records.* As discussed above, Medicare has six (6) years from its initial notice to collect on a Secondary Payer claim. We advise keeping your records for a minimum of six years.

Please contact any of our attorneys if you have questions regarding this or any other legal issues.