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WHAT YOU NEED TO KNOW

What Employers Need to Know about the IRS-SSA-CMS Data Match Program

Beginning in early 2016, many employers received letters from the IRS-SSA-CMS Data Match program. These letters are addressed to the employer and begin by stating that "Medicare needs your cooperation." Employers are directed to report information on the IRS/SSA/CMS Data Match Secure Web Site (https://www.cob.cms.hhs.gov/DataMatch/). The data being requested is often extensive, and can cover a number of years. The questionnaire might include years that an employer did not sponsor a group health plan. The letters typically have a return address of a P.O. Box in New York. The Centers for Medicare and Medicaid Services (CMS) has a lengthy instruction guide for completing the questionnaire.

Employers who receive a letter from the IRS-CMS-Data Match program should immediately apply for an extension for their response, and then dedicate the resources to ensure they submit their response in a timely manner. Consulting with legal counsel is recommended if the employer has any questions or concerns about the process or information.

The uptick in the IRS-SSA-CMS Data Match letters is due to additional funding CMS has received. The Data Match Project has saved the Medicare Trust Fund more than $3.5 billion to date.

What is the IRS/SSA/CMS Data Match Program?

Congress enacted a law in 1989 to provide CMS with better information about Medicare beneficiaries' group health plan coverage. The law requires the Internal Revenue Service (IRS), the Social Security Administration (SSA), and CMS to share information that each agency has about whether Medicare beneficiaries or their spouses are working. The process for sharing this information is called the IRS-SSA-CMS Data Match. The purpose of the Data Match is to identify situations where another payer may be primary to Medicare.

Employers are required to provide CMS with information regarding health coverage of their Medicare-eligible workers and spouses of Medicare-eligible individuals whenever CMS identifies those individuals to the employer. Generally, the questionnaire asks if each named individual worked during a specific time period, and if so, whether he or she had employer-sponsored group health plan coverage. Employers must respond within 30 days of the initial inquiry, unless an extension has been requested and approved.

What are the requirements of the Medicare Secondary Payer rules?

Under federal regulations, Medicare is a secondary payer for many individuals who have an employer group health plan available to them, either as an employee or the dependent spouse or child of the employee. Generally, the Medicare Secondary Payer rules prohibit employers with more than 20 employees from in any way incentivizing an active employee age 65 or older to elect Medicare instead of the group health plan, which includes offering a financial incentive. Employers with 20 or

more employees are required to offer employees age 65 or over the same group health plan coverage offered to younger workers. Workers with Medicare-eligible spouses must be offered the same spousal benefits as employees with spouses that are not Medicare-eligible.

Medicare pays first for Medicare-eligible employees (or their spouses) who are enrolled in a group health plan through their employer, if their employer has fewer than 20 employees.

Are there penalties for not completing the questionnaire?

CMS may take action against an employer that willfully or repeatedly fails to comply with CMS's request by:

- Assessing a civil penalty of $1,000 for each person named in the inquiry for whom the employer has either not responded or provided incomplete information;
- Subpoenaing business records and members of the organization to enforce compliance; and
- Investigating the employer's group health plan or large group health plan for a determination of nonconformance, and if so found, making a referral to the IRS for imposition of an excise tax on the employer.

What is the excise tax?

Contributing to a "nonconforming" group health plan is subject to an excise tax imposed by the IRS of 25 percent of the employer's or employees' total group health plan expenses for the relevant year.

A "nonconforming" group health plan is one that:

- Improperly takes into account that an individual is entitled to Medicare;
- Fails to provide the same benefits under the same conditions to employees and spouses age 65 or older as it provides younger employees and spouses;
- Improperly differentiates between individuals with end stage renal disease, and others; or
- Fails to refund an erroneous conditional Medicare payment.

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