

**SPECIAL POINTS OF INTEREST**

- **2008 MILEAGE RATES**
- **LEGISLATION AFFECTS TRICARE BENEFICIARIES**
- **OLDER WORKERS DECLINING THE GROUP PLAN DUE TO MEDICARE COVERAGE**

**2008 MILEAGE RATES****Source: SPBA Update – December 14, 2007**

The standard mileage rate for the use of an automobile **to obtain medical care** in 2008 will be 19 cents per mile.

The standard mileage rate for the use of an automobile **for business purposes** in 2008 will be 50.5 cents per mile.

IRS Revenue Procedure 2007-70.

**TRICARE IMPOSES NEW RULES ON EMPLOYERS' GROUP HEALTH PLANS** Source: SPBA Case Notes

Effective January 1, 2008 TRICARE's new nondiscrimination requirements and prohibition on incentives will apply to all benefit plans, including self-funded plans.

**What is TRICARE?**

TRICARE is the managed health care program of the Department of Defense for active duty military, active-duty service families, retirees, their families, and beneficiaries. TRICARE is always a secondary payer--which means that insurance and employer sponsored group health plans pay first. This means that if an individual is covered by TRICARE and also by an employer-sponsored plan, and a particular treatment or procedure is covered by both, the employer-sponsored plan must pay first and TRICARE will be the secondary payer.

**What employer plan sponsors need to know?**

Recently enacted TRICARE amendments will subject employers to two new prohibitions, effective January 1, 2008. TRICARE recently enacted new prohibition on incentives. This means that an employer may not provide financial or other incentives for a TRICARE-eligible employee not to enroll (or to terminate enrollment) under a group health plan that would be a primary plan. (You will note that this rule is similar to that under existing Medicare Secondary Payer (MSP) rules prohibiting financial or other incentives.) Under the new rules, each violation of the TRICARE rule can trigger a civil penalty of up to \$5,000.

**TRICARE Amendment Affects Employer Group Health Plans**

On October 17, President Bush signed the John Warner National Defense Authorization Act for Fiscal Year 2007. The Act contains several changes to TRICARE - the health plan that covers United States military personnel. An employee may be covered by TRICARE and an employer's group health plan (a "TRICARE Eligible Employee") under different scenarios. An employee who is a Reservist of National Guard Member may become eligible for TRICARE due to being called up to active duty. This employee may continue coverage under his or her employer's group health plan because the terms of the plan provide for such coverage or by electing to continue coverage under COBRA and/or USERRA. In this situation, the employer group health plan will be the primary payor and TRICARE will be the secondary payor for the services that are covered by the employer group health plan. It is important to note that while an employer group health plan may exclude claims that are incurred as a result of military service, claims for spouses and dependents would be covered as primary by the employer group health plan. Another way an active employee may be eligible for and covered by TRICARE is due to the military service of the employee's spouse. In this instance, the active employee would have double coverage, with the employer group health plan paying primary and TRICARE paying secondary.

**The 2007 Defense Authorization Act**

The new code section, Section 707 of the Act, is effective beginning January 1, 2008, and provides the following:

(1) A TRICARE eligible employee must be given the opportunity to elect to participate in the group health plan offered by his or her employer in the same manner and to the same extent as similarly situated employees of the employer who are not TRICARE eligible employees.

(2) An employer may not offer a TRICARE eligible employee a financial or other incentive for the TRICARE eligible employee not to enroll (or to terminate enrollment) in the employer's group health plan. In applying this rule, the similar provisions prohibiting financial and other incentives for purposes of the Medicare Secondary Payer ("MSP") rules shall apply to TRICARE. (Section 707 of the

Act amends Chapter 55 of Title 10 of the United States Code to add new Section 1097c.)

These two new provisions apply to all employers, including state and local governments, who have 20 or more employees. Legislative history indicates that Congress enacted this provision to address the growing concern that employers are shifting the financial responsibility of providing health benefits to the federal government.

## **OLDER WORKERS DECLINING THE GROUP PLAN DUE TO MEDICARE COVERAGE**

**Source: SPBA Update – December 14, 2007**

BAS and the SPBA have received many inquiries about whether or not it is permissible to give older workers the option to decline the group health plan. Provided that certain conditions are met, employers may offer older workers the option to decline the group health plan.

“Medicare beneficiaries are free to reject employer plan coverage, in which case they retain Medicare as their primary coverage. When Medicare is the primary payer, employers cannot offer such employees or their spouses secondary coverage for items and services covered by Medicare. Employers may not sponsor or contribute to individual Medigap or Medicare supplement policies for beneficiaries who have or whose spouse has current employment status.” Excerpt for CMS Medicare Secondary Payer Manual, Chapter 1 (Rev. 34, 09-07-05).

In the August 31, 1995 CMS final regulations (§411.108(a)(9)), CMS prohibits a group health plan from providing misleading or incomplete information that would have the effect of inducing a Medicare entitled individual to reject the employer plan. An example of misleading information would be informing a Medicare beneficiary of the right to accept or reject the employer plan but failing to inform the individual that, if he or she rejects the plan, the plan will not be permitted to provide or pay for secondary benefits.

If an employer offer a Medicare beneficiary an incentive, financial or otherwise, not to enroll in the plan, the group health plan is subject to a civil money penalty of up to \$5,000 for each violation. In addition, an excise tax could be applied that would equal 25% of the plan’s expenses incurred during the calendar year.

### **Key Points**

If a group health plan provides the option to Medicare eligible individuals to decline coverage, keep these points in mind.

- Employers (with 20 or more employees) may not offer any incentives, financial or otherwise, to discourage Medicare beneficiaries from enrolling in the group health plan.
- Employers (with 20 or more employees) may not offer any incentives, financial or otherwise, to encourage Medicare beneficiaries to terminate enrollment in the group health plan., whether the employee or the spouse.

- Employers should not contribute to individual Medigap or Medicare supplemental policies for the Medicare beneficiaries, whether the employee or the spouse.
- The plan document should explain that the group health plan will not provide or pay secondary benefits to Medicare in the event that the individual declines the group health plan.
- Verbal communications to Medicare eligible individuals should explain that the group health plan will not provide or pay secondary benefits to Medicare in the event that the individual declines the group health plan.

If an employer/plan sponsor abides by the above key points, the employer/plan sponsor may raise the issue of declining the group health plan with an employee. In most cases, the only employees who will consider this as an option are employees who have a major stake in the success of the company and are willing to take a reduction in benefits. However, with increasing cost sharing, other employees with a lower stake in the organization may decide that the cost of the employer group health plan is too high.

While the Medicare Secondary Payer rules do not require a written election from individuals who choose Medicare as the primary payer, it is a good idea to have something in writing showing that the employee voluntarily declined the group health plan.