



# What to do with Marketplace Notices, Appeals, and Medicare Secondary Payer Data Match Letters

**Presented by Benjamin J. Conley, Partner  
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July 2016

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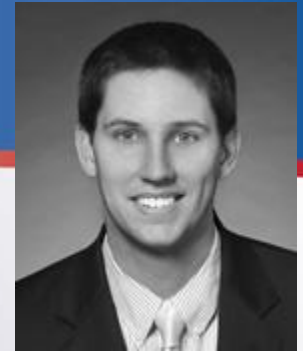
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# TODAY'S PRESENTER

## **Benjamin J. Conley, Partner Seyfarth Shaw LLP**



- Mr. Conley is a partner in the Chicago office of Seyfarth Shaw LLP. He focuses his practice on employee benefit plans. Mr. Conley has experience counseling clients on qualified retirement plans, health and welfare plans, and executive compensation.
- Mr. Conley regularly advises clients on defined benefit and defined contribution plan compliance, including corrections for plan operational errors. He assists clients in drafting plan documents, plan amendments and participant communications. He also advises clients on health & welfare plan compliance, including medical and dental plans, cafeteria plans, flexible spending accounts and dependent care spending accounts. Mr. Conley counsels clients on plan design decisions relating to COBRA, HIPAA privacy regulations and health care reform legislation.
- Mr. Conley is a member of the firm's Health Care Reform Team. This cross-departmental team of lawyers was formed to focus on how health care reform will affect our clients. Mr. Conley started closely following health care reform well before it was passed into law. He regularly consults with governmental agencies on health care reform developments and has submitted comments on health care reform interim regulations on behalf of clients. Mr. Conley has presented extensively on health care reform and what it means for businesses, including leading the Healthcare Reform Certification Program offered by the Employer Healthcare Congress.
- Mr. Conley serves as the editor and primary articles contributor for the Mid American Group Quarterly Benefits Newsletter. He has written articles concerning health care reform legislation, employer wellness programs, fiduciary responsibilities, claims review procedures and retiree medical benefits. Prior to joining Seyfarth, Mr. Conley was a lead articles editor for the *Washington & Lee University Law Review*.

# AGENDA

- Marketplace Notices
- Appeals
- CMS Data Match Program

# Penalty & Appeal Process



**NOTICE**



*Appeal*



**APPEAL**

# Appeal Timeline

January 2016:  
Employee  
enrolls in  
marketplace

“Spring” 2016:  
Employer  
notified of  
marketplace  
tax credit

90 Days After  
Notice:  
Employer  
marketplace  
appeal  
deadline

Fall 2016: IRS  
penalty  
assessment  
notice

Fall 2016:  
Deadline to  
appeal IRS  
penalty  
assessment  
notice

2017: Penalty  
due



# Appeal Process

## What can I do next?

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Remember, it's a

Remember, it's a violation of the Fair Labor Standards Act to discriminate against any employee because he or she received APTC or CSRs.

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CSRs  
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the IRS will determine independantly whether you have to pay.

**SECTION 3:** Tell us why you're appealing the Marketplace determination of this employee's eligibility for help with the costs of Marketplace coverage.

Use the space below to explain why this employee shouldn't have been eligible for advance payments of the premium tax credit and cost-sharing reductions (if applicable). Use extra paper, if necessary. If you're including documents to support your request, send us copies. Keep all original documents.



# Appeal Process

- Should you appeal an exchange notice?

Pros	Cons
First opportunity to state your case	No meaningful financial impact for employer
Opportunity to identify failed coverage offers	Time consuming
Could save employee money	

# Appeal Process

- Types of groups where an appeal might not make sense (at the exchange level)
  - Part-time/variable hour employees
  - Contingent workers

# CMS – Data Match Letter



## Requirement to Submit the Group Health Plan Report for the IRS/SSA/CMS Data Match Project

03/25/2016

Dear Employer:

Medicare needs your cooperation. Congress passed a law in 1989 to provide the Centers for Medicare & Medicaid Services (CMS) with better information about Medicare beneficiaries' health coverage. The purpose of the law is to help Medicare identify situations where another health care plan should be, or should have been, the primary payer for a Medicare beneficiary's health services. (The laws that govern whether Medicare is primary or secondary payer are found at 42 U.S.C. 1395y(b), and the relevant regulations are found at 42 C.F.R. 411.20ff.)

The law requires the Internal Revenue Service (IRS), the Social Security Administration (SSA), and CMS to share certain information that each agency has about Medicare beneficiaries and their spouses. The process for sharing this information is called the Data Match.

CMS has implemented the IRS/SSA/CMS Data Match Secure Website (<https://www.cob.cms.hhs.gov/DataMatch/>), which is now used as the primary method for employers to submit responses to the Data Match Questionnaire. This site can be accessed over the Internet using a standard Web browser. Please refer to the documentation provided on the site found under the "How To" menu option and the Data Match Instruction Booklet under the "Reference Materials" menu option for information on how to register and submit your questionnaire. You will need your Employer Identification Number (EIN) and Personal Identification Number (PIN) printed above in order to register and access your questionnaire on the site. Once you have registered on the site, you will have access to online documentation and a detailed user guide that provides a complete set of instructions. There are three submission options available:

**Direct Entry:** Employers complete the questionnaire using an interactive Web application provided on the IRS/SSA/CMS Data Match Secure Web site. This method is available to employers with up to 1000 workers for whom they must report.

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Private and Confidential

Slides and recording are available [www.nahu.org](http://www.nahu.org)

# What is Medicare?

- Government program to offer medical insurance for elderly and disabled
- Entitlement based on:
  - Age – 65 or older
  - Disability – entitled to disability benefits from Social Security for 24 months
  - End-Stage Renal Disease (ESRD) – eligibility begins three months following commencement of dialysis



# What is Medicare?

Type of Medicare	Benefits
Medicare Part A	Hospital Insurance (hospital, skilled nursing, home health care, hospice)
Medicare Part B	Medical Insurance (doctors visits, preventive, outpatient services, ex-rays, etc.)
Medicare Part C (Medicare Advantage)	Offers HMOs and other managed care options as an alternative to original Medicare; run by private insurance companies
Medicare Part D	Prescription Drug Benefit
Medical Supplemental Insurance (not Medicare)	Private insurance to fill gaps in what Medicare covers

# What are the Medicare Secondary Payer Rules?

- The government does not want employers shifting employees from group health coverage to Medicare.
- So, the Center for Medicare and Medicaid Services (CMS) created a series of rules designed to prevent employers from penalizing employees who enroll in group health coverage when they would otherwise be eligible for Medicare.





# Coordination of Benefits with Medicare

Circumstances	Additional Conditions	Primary Payer	Secondary Payer
Age-based Medicare entitlement + coverage due to current employment status	Employer has 20 or more employees	Group health plan	Medicare
	Employer has fewer than 20 employees	Medicare	Group health plan
Age-based Medicare entitlement + retiree health coverage or COBRA	N/A	Medicare	Group health plan
Disability-based Medicare entitlement + coverage due to current employment status	Employer has 100 or more employees	Group health plan	Medicare
	Employer has fewer than 100 employees	Medicare	Group health plan
Disability-based Medicare entitlement + retiree health coverage or COBRA	N/A	Medicare	Group health plan
ESRD-based Medicare eligibility or entitlement + group health coverage (including coverage due to current employment status, retiree health coverage, or COBRA)	First 30 months of Medicare eligibility or entitlement	Group health plan	Medicare
	After 30 months of Medicare eligibility or entitlement	Medicare	Group health plan

# What is the Datamatch Letter?

- CMS uses the letter to identify whether persons receiving Medicare benefits might also be enrolled in other group health plans.
- The Form *is not optional*
  - Employers who fail to complete the form within 30 days could face penalties including:
    - Civil monetary penalties of \$1,000 per day
    - Subpoena of business records
    - Investigation of group health plan for non-compliance

# Alternatives to Datamatch Survey

- Employers may avoid the survey by entering into Voluntary Data Sharing Arrangements
  - Agreement to electronically share data with Medicare

# QUESTIONS?

You may ask your question in the questions box at any time. Any questions that we do not answer in the time permitted will be posted on the compliance corner webpage in the coming weeks.



# Thank You!

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