

PRODUCT LIABILITY ALERT

MEDICARE SECONDARY PAYER MANDATORY REPORTING

What is it?

The Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) protects Medicare's right to recover Medicare payments made to an individual in a personal injury matter when the Medicare beneficiary has sought recovery from a third party. Section 111 of the MMSEA requires that all settlements, judgments, awards or other payments to a Medicare beneficiary must be reported to the Centers for Medicare & Medicaid Services (CMS).

Who needs to be concerned with its application?

All insurers with respect to liability, no-fault and workers' compensation insurance, as well as any company that is self-insured in connection with these same risks, (all of whom are designated as responsible reporting entities (RREs) under the Act) must determine whether a claimant is a Medicare beneficiary and report to CMS by way of electronic submissions all settlements, judgments, awards or other payments involving a Medicare beneficiary.

When do I need to worry about it?

Now. Although RREs are not required to report settlements, judgments, awards or other payments to a Medicare beneficiary with an effective date before January 1, 2010, registration with CMS to allow the mandatory electronic reporting is open now through September 30. Once registered, RREs may begin testing their electronic submissions in order to be ready to comply with the requirements of live file submissions of reportable events beginning April 1, 2010.

Why do I need to pay attention to this?

Under the federal regulations governing Medicare payments, CMS has a direct right of action to recover (through a lawsuit) from a primary payer (for example, "you") all payments it makes to a Medicare beneficiary. "Primary payer" is defined to include any entity that is deemed responsible to make payments through a settlement, judgment, award or otherwise. Importantly, language in settlement agreements purporting to shift responsibility for reimbursing Medicare to plaintiff's counsel will no longer provide sufficient protection to insureds and self-insureds. The reporting requirements are designed to facilitate the ability of CMS to recover its payments and the MMSEA requirements are backed up with civil penalties of \$1,000 per day for each claim that a primary payer fails to report.

How do I get on top of the compliance requirements?

The process of registering with CMS, testing reporting submissions and compliance with the Section 111 reporting requirements raises myriad issues, and is a work-in-progress to a certain extent. The most effective way to make sure that your company is ready to meet the requirements is to contact an attorney who is familiar with the issues and can walk you through the requirements.

This Alert is intended to keep readers current on matters and is not intended to be legal advice. If you have any questions please contact the Eckert Seamans attorneys with whom you have been working.