

Alerts and Updates

HAVE YOU REGISTERED UNDER MMSEA? NEW REPORTING OBLIGATIONS AND PENALTIES FOR MEDICARE SECONDARY PAYERS

October 15, 2009

Beginning on January 1, 2010, extensive new Medicare reporting obligations will apply to insurance companies and other businesses that make payments to Medicare beneficiaries as a result of litigation claims. The obligations extend to businesses that cover private health insurance, workers' compensation claims programs, no-fault insurance, liability insurance and self-insured businesses. These organizations—known as Responsible Reporting Entities ("RREs")—will be required to report virtually all payments to Medicare beneficiaries, including settlements and payments made as a result of litigation, so that Medicare may determine whether it has a stake in any part of the payment. Failure to report may result in significant financial penalties.

In 2007, Congress enacted the Medicare, Medicaid, and SCHIP Extension Act of 2007 ("MMSEA").¹ Section 111 of MMSEA¹ requires RREs to report any payment made to a Medicare beneficiary when the payment results from a claim of past or future medical expenses. RREs are required to notify Medicare electronically on a quarterly basis of virtually every payment made to a Medicare recipient, unless the injury or all of the exposure alleged to have caused the injury occurred prior to December 5, 1980. RREs must notify Medicare, regardless of whether there is an admission of fault, and must provide Medicare the total amount paid by the RRE—including compensatory and punitive damages, as well as payments made to spouses. Although Medicare will consider the allocation agreed to by the parties or made by a court, it is not bound to follow these allocations and is free to recover amounts in excess of those designated for medical expenses by a court or settlement agreement.

Registration Deadline and Penalties for Not Reporting

Although the September 30, 2009, deadline for RREs to register with the Centers for Medicare and Medicaid Services ("CMS") has passed, RREs that missed the deadline can still register online at www.section111.cms.hhs.gov. Those entities should consider registering as soon as possible. RREs are required to test their ability to upload data files in early 2010 and to begin making quarterly reports of all payments to Medicare beneficiaries in the second quarter of 2010 for payments made in the first quarter of the year. Registering now also allows RREs to begin querying a database of Medicare beneficiaries to determine if a payment must be reported to CMS.

Section 111 imposes substantial civil penalties on RREs that do not report payments to Medicare beneficiaries. The statute provides penalties of up to \$1,000 per day for each claim that a RRE does not report. Significant fines will quickly accumulate for RREs that are not prepared to begin reporting in the second quarter of 2010. Organizations may want to determine whether they are an RRE under the statute and, if so, to promptly implement procedures to ensure that all payments made to Medicare beneficiaries after January 1, 2010 are properly reported to CMS.

For Further Information

If you have any questions about this Alert or would like more information about MMSEA, please contact [Sharon L. Caffrey](#); [Kenneth M. Argentieri](#); any of our [Products Liability and Toxic Torts attorneys](#), our [Insurance and Reinsurance attorneys](#), our [Healthcare attorneys](#); or the attorney in the firm with whom you are regularly in contact.

Note

1. Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), 42 U.S.C. § 1395y(b)(8).