

Medicare Mandatory Reporting: More to Consider As You Defend



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The Medicare, Medicaid, and SCHIP Extension Act of 2007 was signed into law by former President George W. Bush to protect Medicare's interests in personal injury matters. The act requires that tort cases involving a Medicare beneficiary be handled differently from all other personal injury claims.

The Act has already begun to alter the way defendants, insurance carriers, and law firms treat personal injury cases.

Responsibility

The Act sets up a requirement where a Responsible Reporting Entity ("RRE") helps Medicare track payments to the Medicare recipient for benefits received (as well as those benefits that may be received in the future). The RRE is required to advise Medicare when a recipient is involved in a claim and/or lawsuit where he or she may recover money for items or services for which Medicare has paid (or may pay). The Act requires that Medicare be reimbursed for the payments made to the recipient.

The Act places a heavy responsibility on the RRE. If the RRE does not report accurately, the RRE is subject to fines and sanctions. The mandatory reporting by the RRE includes Medicare beneficiaries who also have coverage from a Group, Health Plan, Settlements or Judgments received as well as awards or other payment from liability insurance, no-fault insurance or workers' compensation. Fortunately, this is a Medicare issue, and not Medicaid.

Because of the hefty fines a non-reporting RRE is subject to, it is very important to ascertain whether or not you qualify as an RRE. As a basic test, if you are a "funding source," the answer is that you probably are an RRE. If you are an entity that might make payments to a Medicare eligible individual, you definitely should evaluate whether or not you are an RRE.

Reporting

Once the RRE assumes the responsibility of reporting claims, it must consider which claims it is required to report. As written, the Act specifies that a claim need not be reported if: (1) the settlement amount is less than \$5,000; (2) all exposure relating to the settlement is prior to 12/5/1980; and (3) the claimant is not Medicare eligible. These qualifications have a special significance in environmental or toxic tort cases including asbestos and could alter the enforcement of the Act and possibly prompt a future amendment. If taken as written, asbestos plaintiffs (who are Medicare recipients) would have to start claiming no exposure after 1/1/1980 in order to avoid reimbursing Medicare for the benefits they have received.

The practical impact of the Act on the settlement/resolution process remains to be seen. In the early stages of implementing the Act's rules, many more questions exist than answers. However, the CMS is making efforts to provide updates regarding enforcement and respond to inquiries. If you have questions about this Act and what it means to you or your clients, please contact Tina Van Dam, tvandam@wfbm.com in our Orange office at (714) 634-2522.