



March 2, 2010

## MMSEA Reporting Delayed Until 2011

The Centers for Medicare & Medicaid Services (CMS) has issued important updates to the reporting schedule and guidance for the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA). The most significant change is that Registered Reporting Entities (RREs) are not required to begin reporting payments made to Medicare recipients until January 1, 2011. And, only settlements, judgments, or other awards on or after October 1, 2010 must be reported. The following addresses the most significant updates:

### **When do RREs need to begin reporting under the new schedule?**

RREs need not begin reporting payments to Medicare recipients until January 1, 2011. RREs may begin reporting before January 1, 2011 once their testing is completed.

### **When should RREs register with CMS if they have not already?**

An entity required to register as a RRE that has not already done so, should register no later than September 30, 2010 to allow a full quarter of testing before reporting.

### **Should foreign entities register as RREs?**

An entity based in countries outside the U.S. that has no IRS-assigned TIN or U.S. mailing address may register as a RRE beginning on April 5, 2010. These entities are encouraged to obtain an EIN from the IRS and must report claims under the same deadlines as other RREs.

### **What settlements, judgments, and awards to Medicare recipients are reportable?**

Settlements, judgments, and awards on or after October 1, 2010 are reportable to CMS. This October 1, 2010 trigger date for purposes of reporting is not the date when an actual payment is made or a check is cut in the name of a Medicare claimant. *See User's Guide Version 3.0 at §11.10.2.* The relevant date for reporting purposes is when the Total Payment Obligation to the Claimant (TPOC) is made. In most cases, this will be the date the settlement is signed. However, as there are important exceptions to this general rule, clients and their counsel must carefully review the definition of

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TPOC supplied in the User's Guide. *Id.* at p. 149, Reporting Field No. 100.

### **What are the reporting requirements where there is an Ongoing Responsibility for Medicals (ORM)?**

Claims where an ORM exists on or after January 1, 2010, regardless of when it was assumed, must be reported to CMS.

### **Were there any changes to CMS guidance on who must report?**

Yes. One significant change is that entities that have an insurance plan with a deductible are no longer required to report. *See* February 24, 2010 "Alert for Liability Insurance (Including Self-Insurance), No Fault Insurance and Workers' Compensation: WHO MUST REPORT." These payments must be reported by the entities' insurer. Self-insured entities continue to be responsible for reporting. Because this change may make reporting unnecessary for certain entities that previously registered as RREs, the CMS has provided guidance on abandoning RRE IDs and Ceasing and Transitioning Reporting. *See* User's Guide Version 3.0 at §8.3.

### **Does the updated guidance address or affect the Medicare Secondary Payor (MSP) provisions of the Social Security Act?**

No. Entities that are settling claims with Medicare recipients must continue to take into account potential liability under the MSP, which requires that beneficiaries pay any Medicare liens in a timely manner and that future set-asides are considered in cases where future medical care is anticipated. The settling defendant or its insurer is responsible for satisfying Medicare liens if the plaintiff does not. Nothing in the updated CMS guidance changes these obligations, which existed prior to and are independent from the MMSEA.

### **Open Questions**

Despite these updates, there are still several outstanding issues. The open issue of greatest importance to self-insured entities is how to report settlements in mass torts and other cases where information on the claim and claimant needed for reporting is unavailable on the TPOC date. The CMS stated in its most recent Townhall Meeting on February 25, 2010 that it expects to release guidance extending reporting deadlines in mass tort and perhaps other cases until identifying information regarding the claimant and the amount of the payment is available.

### **Assistance on MMSEA and MSP Issues**

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