

## The MMSEA and Section 111 Reporting Requirements Summary

During the past ten years the spectre of Medicare has to a greater and greater extent begun to effect the litigation and resolution of both workers compensation and liability cases.

Most recently the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA) has changed the manner of reporting of claims to the Centers for Medicaid and Medicare Services (CMS). On March 16, 2009, the Centers for Medicare and Medicaid Services (CMS) released rules for reporting of Liability, No Fault Insurance and Workers Compensation Claims. In essence, any insurance carrier or third party administrator or self insured that directly or partially administers its claims must sign up using the CMS "online" reporting program. Basically if a Carrier or Employer has an obligation to pay claims directly or indirectly, that Carrier or Employer becomes by definition, a Responsible Reporting Entity (RRE) under the Social Security Act.

An RRE is defined under 42 U.S.C. 1395y(b)(8). That section defines RRE's by determining if they are an applicable health plan: which includes Liability Insurance, No-Fault Insurance and Workers Compensation Insurance. Typically Third Party Administrators are never RRE's and only act as Agents for reporting. What this means is that the responsible employer is considered the RRE by CMS. In the final analysis, all self insureds are primarily responsible for the provision of information and thus any fines if leveled. The law also envisions a \$1,000.00 per day fine for failure to report the required information to CMS. Third party administrators (TPA) can act as agents for reporting. We suggest that the TPA contract be modified to define the rights, duties and responsibilities of this relationship.

RRE's must submit Claim information for all applicable claims to CMS through an internet computer reporting system. Initially, RRE's must determine which claims involve a Medicare recipient. The procedure for this is unspecified by CMS although it is recommended that this information should be obtained as part of discovery by way of deposition, interrogatory or subpoena. All claims in which a Medicare beneficiary was the injured party which are resolved or for which a RRE maintains payment responsibility for medical services (typically for workers compensation claims) on or after July 1, 2009, must be submitted to CMS through the online system on a quarterly basis during specified seven (7) day periods. CMS will after receiving this information, return a Profile Report to the RRE which must be executed by a RRE representative.

In effect, the RRE must report any claims in which an injured party is a Medicare Beneficiary to CMS via the online notification system during the quarterly reporting period occurring immediately after such information is discovered. It remains to be seen how draconian CMS will be in enforcing these requirements. Reporting is limited to Medicare beneficiaries only. Reporting is also triggered

if the injured party becomes a Medicare beneficiary during the litigation of the case. In workers compensation cases, the beginning and end of a RRE's medical responsibility must also be reported - for instance if a Workers Compensation Judge Terminates Claimant's benefits by way of decision. The example CMS gives, is a motor vehicle accident (MVA) with multiple parties insured by the same or different RRE / Carriers. In this case there would be multiple reporting for each settlement or part of settlement arising out the MVA for each RRE / Carrier.

It should be noted that the language of resolution of claims has no effect at all upon CMS subrogation rights. Denials of liability mean nothing to CMS - you still must report. If there are multiple defendants involving several RRE's all RRE's must report to CMS.

This is a basic outline of the responsibilities of Employer and Carrier RRE's should you desire any further information, please do not hesitate to contact our office via [bgoldstein@regerlaw.com](mailto:bgoldstein@regerlaw.com).