

To: Our Clients and Friends

August 14, 2009

Reminder: Beginning July 1, 2009, Defendants in Civil Lawsuits and Their Insurers Are Responsible for Reporting Payments to Medicare Beneficiaries

The United States Medicare, Medicaid, and SCHIP Extension Act of 2007 (“MMSEA”) expands the authority of the Centers for Medicare and Medicaid Services (“Medicare”) to recover certain payments by civil defendants and their insurers.

Medicare is a health insurance program for people 65 years of age and older, some disabled people under 65 years of age, and people with end-stage renal disease. Medicaid is a health insurance program for low-income people of all ages who do not have the money or insurance to pay for health care. The federal government sets minimum eligibility standards and coverage requirements for Medicaid.

MMSEA requires Responsible Reporting Entities (“RREs”) such as personal injury defendants and their insurers to determine whether the recipient of a settlement, judgment, award, or other payment is a Medicare beneficiary; and, if so, report that payment to Medicare. This is a significant departure from past practice, which placed the onus on recipients to comply with Medicare requirements.

To comply, civil defendants and their insurers should (1) immediately determine if they are or could become RREs; (2) enroll in the reporting program before September 1, 2009; (3) track and report payments to Medicare beneficiaries beginning July 1, 2009, that involve an ongoing responsibility for medical costs and beginning January 1, 2010, for other settlements, judgments, awards, or payments; and (4) reimburse Medicare for its payments to Medicare beneficiaries for injuries or medical expenses. Failure to comply with MMSEA could result in a civil penalty of \$1,000 for each day of noncompliance for each recipient.

After Medicare receives notice of a judgment or settlement payment (whether or not liability is admitted), a Recovery Contractor will send a Formal Recovery Demand Letter asking the RRE to pay Medicare the amount of relevant benefits that Medicare paid to the beneficiary. Interest accrues from

the date of the letter, but is waived if the RRE pays within the specified time. Failure to reimburse may subject the RRE to double damages and attorney's fees.

RREs may be required to reimburse Medicare even if they have already paid the beneficiary. To avoid double payments, RREs should notify Medicare early in the settlement process and before releasing any settlement funds or paying damages awards.

RRE Defined

An entity is an RRE if it pays, in whole or in part, a settlement, judgment, award, or other sum to a Medicare beneficiary as part of liability insurance (including self-insurance), no-fault insurance, or workers' compensation coverage.

The rules defining RREs are complex, requiring each enterprise to make a careful analysis of its status. Those entities that do not have RRE status should register three months before RRE status could occur, since that is the time needed to complete registration.

What, When, and How to Report

RREs can no longer rely on a claimant's word to determine whether he or she is Medicare eligible. Medicare offers an electronic query system by which registered RREs can verify and re-verify Medicare eligibility using a Social Security Number or Medicare Health Insurance Claim Number. (Re-verifying Medicare eligibility is important. The duty to determine a claimant's eligibility continues until the date of settlement or judgment. If an RRE checks beneficiary status before a claimant becomes a beneficiary and fails to re-verify, the RRE could incur reporting and payment penalties.)

Medicare categorizes payments as Ongoing Responsibility for Medicals ("ORM") and Total Payment Obligation to the Claimant ("TPOC"). Beginning July 1, 2009, ORM payments must be reported, regardless of their amount. Beginning January 1, 2010, all other settlements, judgments, awards, and other non-ongoing payments for personal injuries or medical expenses must be reported if they exceed \$5,000 in 2010, \$2,000 in 2011, \$600 in 2012. After 2012, all TOPC payments must be reported, regardless of the amount.

Medicare requires quarterly electronic reporting through a secure electronic system. Registered RREs can test the reporting process through the first quarter of 2010. In the second quarter, RREs must submit live reports within an assigned seven-day window.

RREs can register at <https://www.section111.cms.hhs.gov/MRA/Login.action>. Although a third-party administrator or agent can report to Medicare on an RRE's behalf, RREs are solely accountable for reporting.

These rules are not set in stone. Medicare has made several changes and anticipates more. Additional information, including a user guide and Medicare updates for MMSEA and MSP requirements, can be found at <http://www.cms.hhs.gov/MandatoryInsRep/>.

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If you have questions or for further information regarding anything contained in this Alert, please contact:

Jeffrey W. Morof
Chicago
(312) 602-5045
jwmorof@bryancave.com

Shalem A. Massey
Irvine
(949) 223-7310
shalem.massey@bryancave.com

Jennifer W. Russell
Chicago
(312) 602-5054
jennifer.russell@bryancave.com