

Federal Mandate:

New Reporting Requirements for General Liability and Workers' Compensation Cases

by Michael R. Merlino II, Esq. Compliance Director and Bob Schmidt Vice President, Sales MedAllocators, Inc.

Almost a year has passed since the federal government passed the Medicare, Medicaid and SCHIP Act of 2007 (MMSEA). According to The Centers for Medicare & Medicaid Services' (CMS) new website, <https://www.cms.hhs.gov/MandatoryInsRep/>, "Section 111 of the [MMSEA] adds new mandatory reporting requirements for group health plan (GHP) arrangements and for liability insurance (including self-insurance), no-fault insurance, and workers' compensation. See 42 U.S.C. 1395y(b)(7) & (8)." For general liability, no-fault, and workers compensation cases these reporting requirements will begin in **July of 2009** and will be phased in through the end of next year. CMS has not provided the details of how the processing is going to be phased in, but by January 1, 2010 the process will be complete and all cases will need to be reported to CMS. All reporting will be done online and the details of the reporting requirements are available on the new website.

What is the purpose of this new law? CMS is trying to make sure that the insurance industry is complying with the Medicare Secondary Payor Act (MSPA). The MSPA was passed back in 1981, but until recently CMS was not monitoring the industry for compliance. The MSPA, in sum, makes Medicare a secondary payer in general liability, no-fault, and workers' compensation cases. Parties to these types of cases cannot unreasonably shift the burden of paying for accident-related medical expenses to Medicare after the case settles. With the passing of the MMSEA, CMS is going to be tracking settlements to make sure the parties to these types of cases are taking Medicare's interests into account and complying with the MSPA.

Why comply? The MMSEA states the parties will have a reasonable time after the case settles to report the terms of the settlement to CMS. CMS has not yet designated what is considers reasonable, but it is expected it will do so in the near future. Failure to comply with the reporting requirements can result in a civil penalty of \$1,000 per day. The burden for

reporting will rest on the shoulders of the insurance companies and self-insured employers.

Although there are still many details to be worked out by CMS, insurance companies, third-party administrators, self-insureds, and defense attorneys should familiarize themselves with the new law, regulations, and CMS's website.

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