

Section 111: Special Issues in Mass Tort Claims

Section 111 of MMSEA Reporting Requirements

With Mandatory Insurer Reporting set to finally take effect on January 1, 2011, the insurance industry, litigants, beneficiaries and legal practitioners continue to face uncertainty regarding Medicare, Medicaid and SCHIP Extension Act (MMSEA) Section 111 Reporting Requirements.

This is particularly true in mass tort litigation. Unlike a more standard tort claim, mass tort litigation presents unique challenges from both a practical and Medicare Compliance standpoint. Clearly, the burden on the parties to comply and cooperate with the mandatory insurer process impacts all facets of mass tort litigation as it does all tort litigation.

No Section 111 Resolution

Section 111 reporting issues have not, by any stretch of the imagination, been resolved with respect to standard tort claims. Despite ongoing testing and receipt of data, CMS continually reworks the technical requirements of the reporting process and periodically clarifies critical elements of the reporting obligation such as the Ongoing Responsibility for Medical Care and what insurance products may be considered “no-fault” insurance.

Some unique issues raised in mass tort claims include proper and timely identification of Medicare status of class members, uncertainty regarding a specific product or products at issue in the litigation and the use of settlement funds or trusts.

Trusts sometimes make it difficult to identify the final recipient of funds and the amount ultimately received. Even less guidance has been provided by the Centers for Medicare Services regarding mass tort claims. CMS has been accepting comments and suggestions for revision of the “Product Liability” reporting fields including limiting the level of detail required and revising the term “Product Liability” itself to more accurately reflect the underlying legal issues.

The recent release of **User Guide 3.1** which, CMS promised, would clarify their policy decisions and provide practical guidance on reporting for mass tort claims, did not address these issues further. CMS did issue a statement that there was further need for the mass torts working group to conference and resolve.

Responsible Reporting Entity for Section 111

As the responsibility for Section 111 MMSEA reporting lies with the Responsible Reporting Entity, MedAllocators recommends that the parties identify and acknowledge their responsibilities under the MSP at the earliest possible time. Making certain that the parties recognize that there is no question that Medicare will pursue recovery of conditional payments (made for medical care on behalf of a Beneficiary when a primary payer is responsible) and that Medicare may impose obligations on the parties for future medical costs is imperative.

Medicare has demanded a seat at the settlement table in standard tort claims and mass tort claims alike. Understanding your responsibilities under Section 111 in conjunction with keeping abreast of CMS policies and procedures is the first step towards successful resolution of mass tort cases.

For additional information and updates on Section 111, please contact Hal Brooks at hbrooks@medallocators.com or (678) 993-3312.