

PUBLICATION

CMS Delays Reporting Requirements for Liability Insurer (and Self-Insured) Settlements

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On November 12, 2010 the Centers for Medicare & Medicaid Services (CMS) issued an alert (dated November 9) delaying the implementation timeline for reporting liability settlements. The reporting obligations stem from the Medicare, Medicaid, and SCHIP Extension Act (MMSEA), which added new and significant mandatory reporting requirements for liability insurance (including self-insurance), no-fault insurance and workers' compensation benefits. Under MMSEA all settlements and payments made to Medicare beneficiaries must be reported to CMS. Liability insurers, including self-insurance, may delay reporting Total Payment Obligations to Claimants (TPOC) settlements for one year, as long as they do not accept liability for the claimant's ongoing medical expenses. However, the timeline for workers' compensation and no-fault reporting of all TPOCs and ongoing responsibility of medicals (ORMs) remain unchanged and will begin in the first quarter of 2011. This delay highlights the many issues which CMS continues to struggle with in this area.

Reporting Requirement Changes

The CMS alert changed the reporting requirements for liability insurers in two significant ways.

1. Liability insurers, including self-insurance, are not required to begin reporting claims on TPOC settlements, judgments, awards or other payments until the first quarter of 2012, as long as the insurer is not paying the claimant's future medical expenses as they arise (*i.e.*, accepting ORM).
2. The previous date of October 1, 2010 for liability insurers to report a TPOC settlement, judgment, award or other payment has been extended to October 1, 2011.

Even though CMS granted the delay in reporting requirements, the alert makes clear that early TPOC reporting by responsible reporting entities (RRE) is encouraged. The RRE term is used to ensure that companies understand that even if they are not an "insurer" they may still have a reporting obligation. The alert specifically states, "early reporting of this TPOC information can work to the RRE's advantage since it will provide the RRE with an opportunity to refine its production reporting process prior to the required reporting date."

CMS clearly states that no-fault and workers' compensation insurers are **not** granted this extension for TPOC reports. Furthermore, the reporting requirements for any insurer (including self-insurance) accepting ORM liability have not changed.

Previous October Alerts

CMS issued two alerts in October which were of interest to all RREs. In the first alert, CMS attempted to clarify the Date of Incident (DOI) for liability insurers, a significant issue for many RREs with cumulative injuries. The DOI will be the earlier of (1) the date that the treatment for any manifestation of the cumulative injury began when such treatment preceded formal diagnosis; or (2) the first date that formal diagnosis was made by any medical practitioner.

The second alert provided some additional guidance on when a report must be made and outlined the criteria to determining reportable events in those situations. In general, all reporting must be made in the quarter following the settlement or assumption of ORM. This is a difficult task in some instances, including class action claims in which all of the individuals in the class and the settlement amounts have not been determined. Once the alleged injured/harmed individual to whom or on whose behalf payment has been identified, and the TPOC amount for that individual has been identified, then the report must be made.

Next Steps

All RREs should continue to review and understand their reporting obligations. Should you have questions about the definition of an RRE and how best to comply with these new requirements, please contact your Baker Donelson attorney.